



Government  
Publications

HANDBOUND  
AT THE




UNIVERSITY OF  
TORONTO PRESS



CAI  
XCII  
- B18







Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto

<https://archive.org/details/31761115496200>



8870  
1  
(Third Session—Twenty-fourth Parliament  
1960

# THE SENATE OF CANADA

Canada. Parliament. Senate. Standing Committee  
on Banking and Commerce



PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

## BANKING AND COMMERCE

1960

To whom was referred the Bill C-53, intituled: An Act to amend  
the National Housing Act, 1954.

---

The Honourable SALTER A. HAYDEN, Chairman

---

WEDNESDAY, MARCH 23, 1960

---

WITNESS:

Mr. Stewart Bates, President, Central Mortgage and Housing Corporation.



HC  
1117  
457  
1360

## BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

### The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor ( <i>Norfolk</i> )
Connolly ( <i>Ottawa West</i> )	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

*\*Ex officio member.*

(Quorum 9)



800042

## ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Wednesday, March 23, 1960:

Pursuant to the Order of the Day, the Senate, resumed the adjourned debate on the motion of the Honourable Senator Hnatyshyn, seconded by the Honourable Senator Higgins, for second reading of the Bill C-53, intituled: "An Act to amend the National Housing Act, 1954.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hnatyshyn moved, seconded by the Honourable Senator Higgins, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MACNEILL,  
*Clerk of the Senate.*







## MINUTES OF PROCEEDINGS

WEDNESDAY, March 23, 1960.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 4.45 P.M.

*Present:* The Honourable Senators:—Hayden, Chairman; Aseltine, Brunt, Connolly (*Ottawa West*), Crerar, Croll, Gershaw, Golding, Haig, Isnor, Kinley, Leonard, Macdonald, McKeen, Monette, Power, Reid, Robertson, Vaillancourt, Wall, White and Woodrow.—22.

*In attendance:* Mr. E. Russell Hopkins, Senate Law Clerk and Parliamentary Counsel, Mr. P. Stuart Secord, Vice President, Central Mortgage and Housing Corporation, and the Official Reporters of the Senate.

Bill C-53, An Act to amend the National Housing Act, 1954, was read and considered clause by clause.

Mr. Stewart Bates, President, Central Mortgage and Housing Corporation, was heard in explanation of the Bill.

On Motion of the Honourable Senator Macdonald it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

It was Resolved to Report the Bill without any amendment.

At 6.00 P.M. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,  
*Clerk of the Committee.*



**THE SENATE**  
**STANDING COMMITTEE ON BANKING AND COMMERCE**  
**EVIDENCE**

OTTAWA, Wednesday, March 23, 1960.

The Standing Committee on Banking and Commerce, to which was referred Bill C-53, an Act to amend the National Housing Act, 1954, met this day at 4.45 p.m.

Senator SALTER HAYDEN (*Chairman*) in the Chair.

The CHAIRMAN: Gentlemen, we have a quorum. May we have the usual motion to report the proceedings?

Senator MACDONALD: I so move.

The CHAIRMAN: May we also have a motion that authority be granted for the printing of 800 copies in English and 200 copies in French of the committee's proceedings on this bill?

Motion made, duly seconded and carried.

The CHAIRMAN: You have heard a great deal of discussion in connection with this Housing Bill. We have with us Mr. Bates, President of Central Mortgage and Housing Corporation, with quite an able representation back of him, but I thought we might start with Mr. Bates; he might care to give some statement in reasonably summary form of the purposes of the amendments, and then any question you have can be answered by him.

**Mr. STEWART BATES, President, Central Mortgage and Housing Corporation:**

Gentlemen, I have not a long statement to make. Listening to the debate this afternoon, I think there is one point on which you should be clear to begin with. The funds we are seeking under section 22 of the Act are used only for lending purposes. The funds that are used for urban re-development, land assembly, do not come from this particular vote, they come from an annual vote from Parliament which appears in the estimates annually of the Minister of Public Works. In other words, they are quite separate from this large volume of Loans in Section 22. The \$1 billion has gone entirely to lending, and almost entirely lending for home ownership, and only in part for rental. Actually since I was here last year the funds we had went entirely to home owners. So these funds we are discussing here are for loans primarily to home owners, and are nothing to do with urban re-development, or research, or land assembly.

Senator WALL: Some of this money will be going into limited dividend rental schemes, for instance, am I right? Could you give some indication of how much money is going into land assembly, urban re-development, and so on?

Mr. BATES: Yes, I shall be able to get that for you. Last year we lent on about 4,500 limited dividend units. These are units for low-income families, and it was fairly well spread across the country. Of that 4,500 just over 1,000 were units for elderly persons. So that there was an amount last year of a total sum of \$45 million that went into limited dividends out of a total expenditure of, I believe, \$343 million.



Senator REID: What do you mean by "limited dividend units"?

Mr. BATES: Those corporations set up to provide housing for low-income families, and they are called limited dividend because the corporation limits itself to a dividend of 5 per cent.

Senator WALL: There are various ways of making an additional amount of money, of course.

Mr. BATES: Although you have not raised this point, I think I should assure honourable senators that the limited dividend operation is looked at with great closeness by the Treasury branch of the Department of Finance.

Senator POWER: Are you likely to have many more loans under the limited dividend system now that the prevalent rate of interest is much higher? There are so many altruists in this country who lend at 5 per cent, when they could get 6 per cent, 7 per cent, or 8 per cent.

Mr. BATES: We do not expect so many. The numbers have fallen off substantially in the past year. We are also held by the Government policy to try to provide these houses for the lowest-income-third in the community. In other words, we are stuck, so to speak, with trying to provide housing for, shall we say, families from \$3,500 to \$4,500 a year, that is, families that can provide at most \$70 a month for three bedrooms. Now, to get costs down to produce rents at that level is becoming almost impossible, as the senator says.

Senator POWER: They are not only lending money, they are taking part in commercial risk and with no prospect of any honest return other than 5 per cent. That is the situation?

Mr. BATES: That is right; and we even become sticky with them if they want to sell it and get out. It is not very attractive, but it is attractive enough for the, shall we say, for instance, Kiwanis clubs, and that sort of thing, who wish to provide housing for old people.

Senator POWER: Is that the type of thing you are getting now?

Mr. BATES: We still get that, yes, and more in some provinces than others. The British Columbia provincial Government makes a grant of one-third of the cost to these operations, and this of course brings down the capital investment, and therefore the rents.

Senator ISNOR: Is that by way of subsidy or by outright gift?

Mr. BATES: That is an outright gift. In British Columbia it is one-third, and Ontario gives a grant of up to \$500 a unit. Most of the other provinces take no part.

Senator MACDONALD: It might encourage these organizations, with the limit as it is now of 5 per cent, if the rate were increased to 6 per cent. Is that a fact?

Mr. BATES: These institutions are really not terribly interested in the rate. Actually, some of them charge no rate, like the Kiwanis clubs.

Senator MACDONALD: Why do you expect a dropping off?

Mr. BATES: Because of the other group of which the senator was speaking—those who are investing in these operations.

SENATOR MACDONALD: It would be likely to attract more funds to that group?

Mr. BATES: Probably if we increased the potential rental it would do more good than altering the rate from 5 per cent to 6 per cent. I do not think there is much difference between 5 per cent and 6 per cent; there may be if it were five to ten.

Senator POWER: Is there a limit to the cost of the units to be built?

Mr. BATES: Yes, there is in effect a limit to the cost, because they must build units of such a nature that they can rent to these low-income families, so there is a very definite cost ceiling, and they submit plans to us.

Senator POWER: Is there an established cost ceiling by regulation?

Mr. BATES: Not by regulation. The cost in Toronto, for example, would be very much higher than in Moose Jaw, because of differences of land and building costs; but we have to try to get this cost at such a level as will yield low rentals, and 5 per cent.

Senator HAIG: That is what they are doing in Winnipeg, and it is doing very well there. A good many church organizations are taking advantage of that, and instead of going out and canvassing to build one house for a man, they get a church organization to go behind a block and build it like you suggest.

Senator KINLEY: Do you know what percentage of the houses, the homes, of Canada are now built by your organization, and how many by other sources, private industry, and individuals?

Mr. BATES: Last year, for example, the total number of starts in Canada were 141,000.

The CHAIRMAN: From every source?

Mr. BATES: From every source. The National Housing Act's contribution was 61,000. In the National Housing Act segment there is the direct Central Mortgage and Housing lending, plus lending of the banks and the insurance companies, and out of the 61,000 C.M.H.C. did 34,000, and the other agencies did 27,000.

In other words, this was the first year in which of the total N.H.A. segment, the Government part, reached more than half the total figure.

But out of the total housing in Canada our 34,000 was a little less than one-quarter of the 141,000 total starts.

Senator KINLEY: Do expenditures on the same type of house compare at all as between the ones built by the different organizations?

Mr. BATES: Much the same except in the non-N.H.A. sector you have the very expensive housing and you probably also have the shack housing on the outskirts of towns, and this latter would not qualify for a loan from anyone, having been built by men who work at night, flashlight builders and so.

Senator ISNOR: Would you comment on a point that was raised in the house this afternoon as to the cost of a building lot. Is the cost of a lot taken into consideration in arriving at the overall value of the loan?

Mr. BATES: Yes. The cost of land, as you know, varies tremendously across this country, and this is not simply the difference in cost of land. Involved in it are different practices. In the province of Ontario for example in most municipalities the price of the lot today includes the price of all the services, it includes the sidewalks, the concrete, and in some places includes the contribution to the schools. In some other parts of the country the old tradition prevails where these services may be put in by the municipality and the owners of the land will have 15 years to pay for them through a local improvement tax.

Senator CROLL: Where are they doing that now?

Mr. BATES: I think it is still operative in the Prairie Provinces, and probably in the Maritimes.

Senator BRUNT: Could you give us a few examples of the cost of land in places where all these services are provided, as compared to the places where they are paid for under a local improvement tax?

Mr. BATES: These services run up to \$2,000, and if the municipality is gouging the subdivider for the cost of schools it may go beyond that. Here in

Ottawa a 60-foot lot today will cost about \$4,500 but it already includes this \$2,000 for these services. The same size of lot in Winnipeg would cost \$2,500 and the owner would pay for the underground services by a local improvement tax. I mention this so that honourable senators will not get too confused when you see land valuations quoted in higher prices.

Senator LEONARD: But as a matter of fact all of these costs are included in the price of the land, and they are all included in the mortgage loan? That is to say, these local improvement costs are capitalized and to that extent the operator is paying for these local improvements at an interest rate of 6 $\frac{3}{4}$  per cent whereas if they are done by the municipality under a local improvement law the rate normally should be less.

Mr. BATES: That is quite so.

Senator HAIG: I think that all comes about partly due to the fact that in some places it is difficult to get the local improvements in at all and in order to get them in they have to go at it on a large scale.

Mr. BATES: Yes, when large builders emerge in any community and have substantial subdivisions, it has been the practice in some cases to throw the whole tax on to the shoulders of the big developers, but in the old days the municipality really had to provide the services.

Senator HAIG: That has been the trouble in Winnipeg.

Senator ISNOR: Is there any relationship at all between the cost of the land as compared with the cost of the completed house?

Mr. BATES: You mean in our valuation system?

Senator ISNOR: Yes.

Mr. BATES: We try to make a difference so far as the actual structure of the house is concerned. We value every house and we try to make the land price correspond to the cost of the house. When we come to the cost of the land we have been a little reluctant to see this vast inflation in land values in the past 10 years, and we have consciously, and maybe I should not say this publicly, but we have consciously tried to hold down the valuation of the land to something around 80 per cent of the market value, so there will be no additional excuse for developers taking full advantage of the market.

Senator ISNOR: That is not exactly what I wanted to find out. What is the cost of the land as a percentage of the cost of the house?

Mr. BATES: Old-timers have a sort of definition for the value of the land, that it should not run more than 20 per cent of the total. But you cannot do this when you build in Toronto and Ottawa, with land running to around \$5,000 for a lot and you want your house to cost \$15,000.

Senator ISNOR: That is the very important point I wanted to bring out. Today land values are so high that it is almost impossible to make a definite rule?

Senator BRUNT: The 20 per cent formula does not apply when all the services are in?

The CHAIRMAN: It is bound to give you a cheaper type of house if you hold down the sale value of the house to \$15,000, to the extent that your land cost is often a basic figure.

Mr. BATES: Yes, and then we are limited by the maximum size of the loan.

Senator REID: Does a loan made under the Central Mortgage and Housing include the taxes?

Mr. BATES: The monthly payment includes the real estate tax, with repayment of principal and interest. In other words what the person has to pay each month includes the local tax.



Senator REID: In British Columbia the price of a lot before any installation of services is made on it amounts to \$2,000, but the price rises to \$4,000 after the services are installed. Does that go into the tax roll of \$4,000?

Senator BRUNT: In the case of a house costing \$15,000 built on a \$5,000 lot, plus \$2,000 for improvements, does the 20 per cent formula still apply to it?

Mr. BATES: Pretty close. An honourable senator asked me about the cost of completed Federal Provincial low rental housing projects. This is federal-provincial rental housing units. The projects completed to date—and this is since the act came into force in 1948—in 1958 the cost of construction amounted to \$46 million; total cost to date, \$104 million. Of this the federal Government's share is \$78 million, not a substantial figure, from 1948 to 1960, an investment of \$78 million.

Senator WALL: That is from 1948 until 1959?

Mr. BATES: Yes. There are not many units involved. Across the whole country there are actually 5,000 units.

There were 3,600 under construction at the end of the year. For public housing, this is by no means a large figure.

Senator KINLEY: I suppose it can be assumed that in most cases where a man builds a house, unless he is just a young man, he leaves another house; that would mean that housing accommodation of lower cost would become available for someone else. I know that happens very often in my part of the country: when a man builds a new house he either sells or rents his former accommodation. Therefore, it might be said that when you built 62,000 of the 141,000, probably 50,000 of those purchasers left other accommodation.

Mr. BATES: I don't think we know where they came from.

The CHAIRMAN: A good many of the buyers of new homes may have been newly created families, and would come out of a one-family unit.

Senator KINLEY: That is quite true. In the house in which I used to live there were fourteen people, and now there is only one person. The population of the town of Lunenburg has not changed since I was a boy, and yet they have been building houses ever since, and have never had a fire.

Senator CROLL: Mr. Bates, when the interest rate was increased in December of last year, what sort of response did it bring in the way of additional money into the lending field?

Mr. BATES: As you know the increase in the rate was not applicable to the chartered banks.

Senator CROLL: I realize that.

Mr. BATES: It was applicable only to the other approved lenders, such as life insurance companies and trust companies. They were good enough to come to Ottawa in December when they heard about this adjustment in the interest rate, and they indicated to the minister that it was unlikely we would see much effect of the new rate before March or April, but then we should see a substantial effect come forward. They had to change their plans, reorientate things, take a look at the bond situation and so forth, but they thought we would see an appreciable difference by April.

Now, in January and February we did not see very much change. On the other hand, these same lenders indicated to us in late February that they had very few requests from the building industry. The industry itself was perhaps marking time a little bit.

We came into the new year with 82,000 houses under construction, a very substantial volume on top of two years of record-breaking production; that is, we had produced 300,000 houses in 1958 and 1959, and we came into 1960 with 82,000 under construction.

True, there were one or two soft spots throughout the country, one in some parts of Winnipeg, another in parts of West Vancouver near where Senator Reid lives, and in some parts of Scarboro. There were these soft spots, and the builders had these houses at 6 per cent. Presumably they wanted to trade these houses before they began the year and hooked up with the 6½ per cent. Builders do not like to be selling houses at different prices.

So there has not been very big demands in the months of January and February.

The CHAIRMAN: Of those 82,000 houses as of January 1, 1960, how many would be yours?

Senator CROLL: I think the answer was 35,000.

Mr. BATES: I think you are probably right, Senator. Last year the other lenders did most of their lending in the first six months of the year and then gradually withdrew from the market, and we came in to fill that gap. We had a very large volume of housing loans in September and October.

Senator CROLL: Mr. Bates, the statement was made that only 8.4 per cent of the total loans in the third quarter of 1959 went to people earning less than \$4,000. Does that seem correct to you?

Mr. BATES: When you get under \$4,000, you are getting down pretty low.

Senator CROLL: I am not complaining; I am just asking that question.

Mr. BATES: We have the figures here: 52 per cent of the applicants last year were earning less than \$5,000. As I say, once you get below \$4,000 you are getting pretty low.

Senator KINLEY: Does that apply to the rural communities?

Mr. BATES: Pretty much.

Senator KINLEY: \$4,000 in a rural community is a rather good income.

Mr. BATES: But in a rural community there isn't very much demand for new houses. The community is established and there is not very much building.

Senator KINLEY: They look after it themselves.

Mr. BATES: Senator Croll, for those under \$4,000 we had only 8 per cent of the borrowers.

Senator CROLL: So the figure I gave is approximately correct. I have another question, and as I have been plaguing you for so many years I hesitate to ask it. You now have accumulated \$60 million under an insurance fund?

Mr. BATES: Yes.

Senator CROLL: And you are still charging 2 per cent?

Mr. BATES: That is what the law tells us.

Senator CROLL: I know what the law tells you.

Mr. BATES: I am just getting my oar in, Senator.

Senator CROLL: As I understand it your defaults numbered less than 30.

Senator BRUNT: What are the figures on defaults?

Senator CROLL: I will get the figures on defaults. I understand they are less than about 30.

Senator BRUNT: Thirty what?

Mr. BATES: Thirty units.

Senator CROLL: Amounting to something in total payments of less than \$300,000.

Mr. BATES: The figure is 50-odd, and it would be about \$300,000. We have the detailed figures here if you need them.

Senator CROLL: \$300,000 in defaults?

Mr. BATES: Since 1954.

Senator CROLL: But not actually contemplated defaults.

Mr. BATES: In most instances the house has not been left empty; we have had somebody else take over in cases where we could not sell the house.

Senator CROLL: But would you say that \$300,000 is a firm figure, or that it might be less than that as a result of what you may recover?

Mr. BATES: I don't know what we are going to recover from these houses in the next 20 years, but \$300,000 is the money we have paid out at the time we got these houses. We are re-selling the houses or renting them.

I now have the detailed figures: 53 claims, totalling \$552,000. That is pretty fair, \$10,000 a unit—that is a satisfactory loan. During the past year we paid out \$375,000 on 36 claims.

Senator CROLL: What do you say the actual loss will be? Can you make a guess or an estimate?

Mr. BATES: I don't like to tell this, but on the houses that have been passed over to us I have already made a profit of \$17,000 on selling them.

Senator CROLL: And what profit do you contemplate on these other houses?

Mr. BATES: In other words, the loss, up to date, obviously has been a very small ratio. If we run into something at Elliot Lake—

Senator CROLL: What I am getting at, Mr. Bates, is that the \$60 million, which is protection for one side only, is a considerable sum. I am not suggesting it is Government policy to leave it as is, but what do you do with that \$60 million. What pocket do you put it in? What do you do with the \$60 million?

Mr. BATES: This is set out in the National Housing Act. There is only one thing we can do with it, and that is purchase Government of Canada bonds.

Senator CROLL: That is the only thing you can do with it? You cannot re-invest it?

Mr. BATES: No, it must be there in Government bonds.

Senator CROLL: That was originally in the Act?

Mr. BATES: That is in the Act, yes, sir.

Senator CROLL: From the beginning?

Mr. BATES: From the beginning, yes.

Senator CROLL: Whereas the other money you receive goes to repay the money you borrowed, this money must stay in Government bonds?

Mr. BATES: Yes, that is right. We are simply trustees of a fund.

The CHAIRMAN: What do you do with the interest?

Mr. BATES: The interest must be paid back into the fund.

Senator CROLL: That is the only method of investment for that money?

Mr. BATES: Yes.

Senator BRUNT: Do you not pay the interest into the consolidated revenue fund?

Mr. BATES: No, the interest goes back into the fund.

Senator REID: How does the fund stand now?

Mr. BATES: It is over \$60 million. I have the figures here. It is \$61,081,653, against a commitment of \$3.4 billion.

Senator CROLL: Do you mean the overall commitment?

Mr. BATES: That is the risks faced by the fund.



Senator LEONARD: Mr. Bates with respect to that insurance fund, as the loan is reduced the 2 per cent that was originally paid still stays there. So while you started off with a premium rate of 2 per cent which, presumably, is calculated on the basis of taking care of the loans, the insurance is now actually at a much higher rate than 2 per cent of the amount of risk because of all the loans that have been reduced and paid off?

Mr. BATES: This will become more true as time passes.

Senator LEONARD: It is true now.

Mr. BATES: Well, N.H.A. loans do not get paid off as quickly as conventional loans.

Senator LEONARD: I understand they were being paid off in 15 or 16 years?

Mr. BATES: Yes, but the fund has only been in existence for five years.

Senator LEONARD: That would be a third, then, on the average.

Mr. BATES: Yes.

Senator CROLL: I read some of the literature from your department indicating that the loans were being paid off at a much faster clip than was anticipated. I recall that very vividly. Is that true?

Mr. BATES: Yes, the loans are being paid off faster, but we are, of course, taking on more and more loans, and we have to work on the assumption that they are likely to be there for 15 years. The Americans have been in this game for 20 years longer than we have, and their average length of loan is still 15 years.

Senator CROLL: Mr. Bates, in view of the situation with respect to the banks in that they are limited to an interest rate of 6 per cent—this may have been covered before I came in—but have you approached the banks and asked them as a matter of public service, and because they are out in the little communities, whereas it is hard for you to reach people who want money in such places whether they would continue until other arrangements could be made, or until some facilities were provided, to lend at the regular rate of 6 per cent which rate of interest they are getting on loans, anyway?

Mr. BATES: No, we have not approached the banks on this.

Senator KINLEY: Have they stopped lending?

Senator BRUNT: Yes, they have stopped lending.

Senator CROLL: After all, the banks provided lending facilities for the people in the small municipalities. They were the people who were best capable of doing that. That is out the window now, and the applications have to be made to Winnipeg or Toronto or Montreal. I assumed that you would have approached the banks and said: "You are lending money at 6 per cent to other people. Will you continue to lend here in the small municipalities until we make other arrangements to provide for these people somehow or other?"

Mr. BATES: Yes; we are anticipating that the banks' customers will be asking them to provide accommodation—builders, home-owners and others.

Senator CROLL: But I remember when the banks were called together in 1957 for the purpose of making loans available, and they did make loans available at that time. In the light of the present situation I cannot understand why they were not called in and asked to do that.

Senator REID: When one borrows at 6½ per cent over 20 or 25 years how much has he paid in interest? The statement was made that in 25 years he would have almost paid for the house twice—that is, with interest and the repayment of principal.

Mr. BATES: The additional three-quarters of 1 per cent means something on the average loan of around \$4 to \$4.50 a month. In other words, it means nearly \$60 a year. That rise in interest means \$60 a year extra in payments.



The CHAIRMAN: That was not the question Senator Reid asked. He wanted to know how much interest had been paid.

Senator REID: Yes, it is important to know.

Senator BRUNT: The tables would show that.

Senator CROLL: The table shows that you pay double for the house by the end of that time, under the present interest rates.

Senator REID: In a period of 30 years the man has paid twice for the house.

Senator HAIG: No, no.

Senator CROLL: Let me think of some more questions.

The CHAIRMAN: Senator Wall has a question.

Mr. BATES: Senator Reid asked me a question. With respect to a loan of \$10,000, senator, the borrower pays total interest charges of \$9,197 at the rate of 6 per cent, and \$10,553 at the rate of  $6\frac{3}{4}$  per cent.

Senator REID: Over how many years?

Mr. BATES: That is 25 years, and he has to repay the principal. In other words, at  $6\frac{3}{4}$  per cent he is paying just a little more than twice. He is repaying his \$10,000 plus \$10,553 in interest.

The CHAIRMAN: The answer is to pay it off quickly.

Senator CONNOLLY (*Ottawa West*): You cannot.

Senator BRUNT: Yes, you can.

The CHAIRMAN: Are there any other questions?

Senator KINLEY: I want to ask about the architecture of these houses. You heard the discussion in the House. There was quite a discussion about the scarcity of bedrooms in these houses.

Senator MACDONALD: Yes, that is a very important question.

Senator KINLEY: Why is it that you have so few bedrooms in these houses? Actually, the ones I know about have more than two bedrooms. I think the ones you build for the services are two-storey houses and have more than two bedrooms.

Mr. BATES: Most of the houses built are three-bedroom houses. Last year, with respect to single family dwellings, out of 50,000 N.H.A. houses 43,900 had three bedrooms; almost 44,000 out of 50,000 had three bedrooms.

Senator BRUNT: What were the rest? Have you the breakdown?

Mr. BATES: Yes, I have. The number of one-bedroom houses totalled five.

The CHAIRMAN: Five thousand?

Mr. BATES: No, five. The number of two-bedroom houses totalled 2,289; three bedrooms, 43,932; four bedrooms, 4,500, and five bedrooms, 162. There were 46 under the classification of "unspecified".

Senator KINLEY: Would the three-bedroom houses be two-storey homes for the most part?

Mr. BATES: No.

Senator MACDONALD: I might say that I placed that table on *Hansard* last night.

Senator BRUNT: Have you any figures as to the number of unsold houses as of December 31, 1959?

Mr. BATES: Yes, we have the figures here.

Senator BRUNT: Could we have them?

Mr. BATES: I will get them for you. I would like to point out that when I refer to an unsold house it is a house on which we have completed all our inspections and the house is awaiting sale. Now, a builder may bring his house

up to almost the final stage and hold it there, perhaps leaving the kitchen unpainted in the hope that it will attract some housewife because he is able to say to her "If you want this in yellow I will paint it yellow" or he may put on special door knobs or something of that kind. So when I give you the figures on completed unsold houses, these houses are really completed. The number of houses that are unsold but almost completed, we just don't know.

Senator BRUNT: All right.

Mr. BATES: The number of completed unsold houses amounted to 3,491 at the end of December.

Senator BRUNT: I don't suppose you have a breakdown as to types?

Mr. BATES: As to two bedrooms, there were 157 units; three bedrooms, 3,017 units, and four or more bedrooms, 317.

Senator CROLL: What is the price range in selling them?

Mr. BATES: There are all kinds in there. There are a lot of small houses. These are all N.H.A. houses running from \$10,500 in, say, Moose Jaw to \$16,500 and \$17,000 in Toronto. It is that sort of range.

Senator CROLL: What price of house are you heavy on?

Mr. BATES: I do not know if we have the prices here.

The CHAIRMAN: They are heavy on the three-bedroom houses.

Mr. BATES: And in Toronto, on the small house.

Senator GOLDING: Are these houses that are unsold spread pretty well over the country or are they in any particular section?

Mr. BATES: We have the regional distribution here if you want it. They are pretty well spread throughout the country, except that in an area like Toronto where there is a great mass of building, the proportion of unsold houses appears large.

Senator LEONARD: Would you follow that up by giving us a comparison with a year ago?

Mr. BATES: A year ago in December it was 3,213 as against 3,491.

Senator LEONARD: Not very much difference considering the greater number of houses?

Mr. BATES: No.

Senator LEONARD: You also maintain accurate records as to the length of time houses remain unsold. Without giving us the exact figure, is there any trend evident from the figures that you have available?

Mr. BATES: I do not think there is any marked trend. The number has changed very little in the past few years.

Senator LEONARD: When you have appeared before this committee on previous occasions you have given us an estimate of what you have thought might be the effective demand during the year for starts on houses, and you have been pretty accurate in your forecasting. I wonder if you have any estimate for 1960 as to housing starts?

Mr. BATES: We have the number for "less than one month" and for "more than one month" for the various cities in Canada. For Edmonton in December, 1959, and January, 1959, 141 and 209. For Hamilton, 145 and 154.

Senator CROLL: If you answer that question it would tie everything in together. Senator Leonard asked for an estimate.

The CHAIRMAN: This is an answer to the previous question as to the length of time houses have remained unsold.

Mr. BATES: There has been no real change.

Senator LEONARD: What about your estimate for starts in 1960?

Mr. BATES: It is pretty true to say that in the last ten years the housing situation from year to year has really depended on the supply of mortgage money. In a year when the mortgage money was ample, the volume went up and you found a lot of houses started, and in 1958 there were 165,000 houses started. Last year there were 141,000. This was essentially due to a cut-back in the mortgage supply situation. Facing us for 1960 is a still bigger cut-back. We must assume that the banks will not do the same volume of business as they did in housing last year when they did about 15,000 units. This year they may do 5,000 if they are pressed by the customers.

Senator CROLL: What an optimist!

Mr. BATES: They are going to get the same rate of interest on houses as any other loan. Why shouldn't they lend to a builder as to anyone else? It is the same 6 per cent.

Senator CROLL: You know as well as I do that the banks won't lend and you know what they are bargaining for, so let's not fool ourselves.

Mr. BATES: Each year in Canada there is a very considerable element of houses put together outside the National Housing Act. It is partly conventional loans, there being about 40,000 of these. But there is altogether 40,000 to 45,000 a year that do not appear anywhere in the lending picture, but nevertheless these houses are built. They are built by people who have money or they are the shack-type of housing. Each year you get 80,000 to 85,000 starts outside the National Housing Act. This year among the approved lenders we would expect, from what the insurance companies have indicated to us, that they may do between 15,000 and 16,000 units. Maybe the banks won't do five, maybe they will do some less. Maybe we are being sanguine when we say we will get 20,000 from the approved lenders. The Government has instructed us how much we are to spend, \$150 million to \$175 million. So this gives you 15,000 to 17,000—18,000 with limited dividends. In other words, you get a figure somewhere of 120,000 to 125,000 with this flow of mortgage money. With the flow of mortgage money bigger the volume of housing would be bigger and apparently it would be sold. Canadians seem able to swallow housing faster than anything else.

Senator KINLEY: Will the need continue?

Mr. BATES: The need will become very, very large in a few years, when you consider that we have six million children at school, and that they are going to get married and will be in the housing market by 1965.

Senator CROLL: We heard your charming voice on the radio saying that it would be 125,000 minimum.

Mr. BATES: At the moment. By 1965 it will have gone up.

Senator CROLL: And I think your own report indicated 136,000 on an average.

Mr. BATES: On an average, yes, but we could drop to 125,000 in one year.

Senator CROLL: But in addition you said there was a doubling up, I think in 100,000 families—the need was there for something in the way of housing.

Senator LEONARD: In other words, the limiting factor at the moment governing your estimate is the financing of those houses, and if there were more financing of housing available there would be more starts, in your opinion?

Mr. BATES: That is right.

Senator MACDONALD: In regard to the money to be loaned by you this year, will no application be considered for anyone making more than \$5,000 a year?



Mr. BATES: You see, we have this problem. If we are instructed by the Government to distribute no more than \$150 million on individual units, that is 15,000 units approximately. Now, if the banks are out as completely as we feel,—we know last year that there were 25,000 borrowers under \$5,000, and if there was no allocation technique whatever we would run far beyond the \$150 million.

Senator MACDONALD: Would you just take into consideration the annual earnings of the applicant? Don't you take into consideration whether or not he has children, for instance?

Mr. BATES: Yes. I think when the question came up in the House of Commons there was not very much discussion on this. I think our view as administrators would be that we would use the \$5,000 income level for the average families of Canada, that is, with two children, one child, or no children, but if people have more than two children, then we would increase the eligibility level, say to \$5,200 with three children, \$5,400 with four children, \$5,600 with five children and over. I think we would likely as administrators add that on. This would increase eligibility up to \$5,600 a year with four children or more.

Senator MACDONALD: Yes, but if the money is taken up by married couples, we will say, there will be no more money left for the man who has five children.

Mr. BATES: Well, the applications are open to all. We are hoping that under this allocation technique we will be able to spin out the funds to last most of the year.

Senator MACDONALD: Is it so that if a man is making \$5,000, and his wife is making \$2,400 you just consider that the husband is making 5,000 and his application is received, whereas the man who himself is making \$7,400, his application would not be received?

Mr. BATES: No, sir. At present, and for the past ten years, I think, the corporation in considering a man's income has always been prepared to consider the wife's income as well, in considering the husband's ability to carry the loan, and we have allowed up to 20 per cent of the wife's income in this measure, and we have proposed his eligibility as well.

Senator MACDONALD: At \$5,000 he would be out. If he had \$7,400, what would be his position then?

Mr. BATES: If he had \$7,400 he should go to an approved lender for a conventional loan.

Senator MACDONALD: Supposing he had \$4,000, and his wife \$2,000?

Mr. BATES: Well, he would be eligible.

Senator MACDONALD: A man with \$6,000 is out?

Mr. BATES: He is out.

The CHAIRMAN: He is out to start with.

Senator MACDONALD: I do not want to delay the committee too long, but I notice on this table which you have just quoted that last year there were 60,800 houses built, and that only 4,600 of those houses have four bedrooms. I am very much concerned about the families with five or six children. How are they being housed?

Mr. BATES: We do not really determine these, you know. We do not determine this in any way. We make a loan, and if the builder is putting up a three-bedroom house, or the owner wants a four or a five-bedroom house, we lend on it. We have no directional activity. We do know that the four-bedroom house is expensive, and that the re-sale value of the three-bedroom house is such that it is easy to sell again.



Senator MACDONALD: How do these people live who have six or seven children?

Mr. BATES: I guess they double up, two to a room, the same as they did in Lunenburg in the old days.

Senator KINLEY: Or anywhere else.

Senator MACDONALD: Is the Central Mortgage and Housing Corporation giving any thought to the problem which must be facing a lot of our families who have six or seven children, or does it consider it is its concern, or the concern of the Government?

Mr. BATES: Well, it is a very important problem in the field of public housing, and we recognize it as a very significant problem. We gear the rents to the man's income and the number of children. In other words, we have no blind eye in public housing. We have a blind eye to lending money to home owners.

The CHAIRMAN: Because they have to sell them.

Mr. BATES: Because they have to sell them.

Senator MACDONALD: Have you a blind eye to the necessity of having houses which will accommodate man and wife and six children?

Mr. BATES: We won't say no to anyone who wants to build four-bedroom houses.

Senator MACDONALD: But are you in any way encouraging the building of such houses.

Mr. BATES: Not through any differential treatment.

Senator MACDONALD: Then your corporation is not concerned particularly about this problem which must be facing a great many families?

Mr. BATES: Except in public housing, we are very concerned about that. The whole policy turns around on the size of the family and the income.

Senator MACDONALD: But you are not providing any houses for that type of family?

Mr. BATES: Oh, yes. In Regent Park south we have five-bedroom houses, and also five-bedroom houses in Jeanne Mance, Montreal, at \$35 a month, which is pretty good going—there is a very substantial subsidy in that.

Senator MACDONALD: How many houses are there throughout Canada of that type?

Mr. BATES: Not many. We have only got these projects started. I don't know how many five-bedroom houses they have in Toronto, and the recent cost. It is not very many, Senator.

Senator MACDONALD: I do not say it is your problem, but I do say that even your corporation, or either your corporation or the Government, in my opinion should face up to this problem and try to come to some solution whereby there will be houses sufficient in number to look after, well, the medium-sized family, not the large-sized family.

The CHAIRMAN: We can only do two things here: One is to call attention to this situation, which certainly has been done very forcibly by you here and in the Senate, and by some others. The second thing is to suggest that it is a problem that requires attention. Apart from that we cannot do anything more about it.

Senator KINLEY: Mr. Bates, you know that a family with five or six children cannot rent a house today in hardly any town. Landlords won't rent to such a large family. That has been my experience. To look after families of that size we will have to build houses for them. I personally know of families who moved from Nova Scotia to Montreal, with their five or six children, and they cannot get a place to live in.

Mr. BATES: That is an unfortunate discrimination against children.

Senator KINLEY: The outlook for accommodation is rather hopeless for a large family.

Senator BRUNT: What is the maximum interest rate charged on National Housing loans today?

Mr. BATES:  $6\frac{3}{4}$  per cent.

Senator BRUNT: At one time you charged a rate of 5 per cent, did you not?

Mr. BATES: Since I have been in the corporation 5 per cent was the lowest rate, but historically  $4\frac{1}{2}$  per cent was the lowest.

Senator BRUNT: If a person has a mortgage at a 5 per cent rate today that has yet to run say 10 years and if he comes to you to pay it off do you charge a bonus?

Mr. BATES: Before the end of three years a bonus is charged. If the permissible additional mortgage payments are made. Most of these 4.5 per cent and 5 per cent mortgages would be in the hands of approved lenders and they are only too glad to see them paid off.

Senator BRUNT: Do you charge a bonus for a mortgage paid off before maturity?

Mr. BATES: The N.H.A. mortgage provides for payment of an interest bonus if additional mortgage payments are made before maturity.

Senator BRUNT: Therefore, if a man has a mortgage at a 6 per cent rate and wants to pay it off within three years you will charge him a bonus to do so, even though you can take that money and get  $6\frac{3}{4}$  per cent on it today. You would make money doing that.

Mr. BATES: When this is paid to us we have to pay it over to the federal Government.

Senator BRUNT: Why do you charge him a bonus?

Mr. BATES: Because that is the regular practice of lending institutions, and if we were to do something different there would be many complaints from banks and insurance companies.

Senator BRUNT: Do you charge three months' interest as a bonus?

Mr. BATES: Yes but I do not think there have been many such cases and that is probably why we are not so familiar with the details. In the case of people who move from one town to another and wish to pay off their mortgage, the bonus may be waived.

The CHAIRMAN: Gentlemen, are you ready for the question?

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, has Mr. Bates any figures to indicate the percentage of housing starts over the last few years which were financed by direct loans from Central Mortgage and Housing Corporation and those which were financed otherwise?

The CHAIRMAN: That information has already been given. It is on the record.

Senator CROLL: From everything I can read I am of the view, and I would like your comment on it, that the United States is doing many, many times more, on a per capita basis, in the building of low-cost housing and low-rental housing than we are. Why are we not making progress in that field?

Mr. BATES: They have been at it longer than we have. Their municipalities are more interested in this type of operation, perhaps than ours are. After all, in a city like Montreal the first project of low rental housing has only been started. No American city is in that situation. Cities like Buffalo and Cleveland moved into that field in 1934 or thereabouts and they have been

at it ever since. You will remember that under the Roosevelt administration easy terms were given and the municipalities have been willing to proceed with such construction. In Canada we depend on the municipality's initiative. In other words, the federal Government has taken the view it will not initiate anything, that it is up to the municipality, the local Government, or the province to do so.

Senator CROLL: What has been United States experience on very low payments and extended length of time in which to pay, compared with the repayment terms in Canada? Under their system they require a very low payment and allow a much longer time to repay. What has been their experience on defaults, repayment and that sort of thing?

Mr. BATES: The pressure on their funds has not be significant. They started their insurance operations in 1934. They have had 26 years' experience at it. This year they are going to reduce the insurance fees. In other words the fund is becoming fairly lush.

Senator CROLL: I am thinking of the very low down payment on houses. What has been their experience in defaults and that sort of thing?

Mr. BATES: Their experience has been good.

Senator ISNOR: Mr. Bates, you will remember last year when you were before us, a brief was presented by the universities asking that you give consideration to providing funds for the building of residences for students. Have you given that any further thought?

Mr. BATES: This is a matter of Government policy. The matter has been before this Government, and they have indicated no change in view from their predecessors. That is, they regard university residences as being beyond the scope of the National Housing Act at present.

Senator ISNOR: Have you made a recommendation?

The CHAIRMAN: No, no.

Mr. BATES: The matter has been before the Government within the past year.

The CHAIRMAN: Are you ready for the question? Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee adjourned.











Third Session—Twenty-fourth Parliament  
1960

# THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

## BANKING AND COMMERCE

To whom was referred the Bills C-2, intituled: An Act to amend the  
Indian Act and C-3, intituled: An Act to amend the  
Canada Elections Act.

---

The Honourable SALTER A. HAYDEN, *Chairman*  
WEDNESDAY, MARCH 23, 1960

---

The Honourable THOMAS REID, *Acting Chairman*  
THURSDAY, MARCH 31, 1960

---

WITNESSES:

The Honourable Ellen L. Fairclough, Minister of Citizenship and  
Immigration and Mr. H. M. Jones, Director of Indian Affairs, Depart-  
ment of Citizenship and Immigration.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1960

## BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor ( <i>Norfolk</i> )
Connolly ( <i>Ottawa West</i> )	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

---

\**Ex officio member.*

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, March 17, 1960:

"Pursuant to the Order of the Day, the Honourable Senator Gladstone moved, seconded by the Honourable Senator Gershaw, that the Bill C-2, intituled: "An Act to amend the Indian Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Gladstone moved, seconded by the Honourable Senator Gershaw, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

"Pursuant to the Order of the Day, the Honourable Senator Gladstone moved, seconded by the Honourable Senator Gershaw, that the Bill C-3, intituled: "An Act to amend the Canada Elections Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Gladstone moved, seconded by the Honourable Senator Gershaw, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

WEDNESDAY, March 23, 1960.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 A.M.

*Present:* The Honourable Senators: Hayden, *Chairman*; Aseltine, Beaubien, Brunt, Crerar, Croll, Gershaw, Golding, Gouin, Haig, Horner, Isnor, Kinley, Leonard, Macdonald, McDonald, McKeen, Power, Reid, Taylor (*Norfolk*), Turgeon, Vaillancourt, Wall, White and Woodrow—25.

*In attendance:* Mr. E. Russell Hopkins, Senate Law Clerk and Parliamentary Counsel; The Official Reporters of the Senate, and Mr. L. L. Brown, Special Assistant to the Director of Indian Affairs, Department of Citizenship and Immigration.

Bill C-2, An Act to amend the Indian Act, and Bill C-3, An Act to amend the Canada Elections Act, were considered.

On Motion of the Honourable Senator Aseltine it was Resolved to Report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Bills.

Mr. H. M. JONES, Director of Indian Affairs, Department of Citizenship and Immigration, was heard in explanation of the Bills.

The Honourable Senator Croll moved that Bill C-2 be amended as follows:—

*Page 1, line 5:* Strike out line 5 and substitute therefor the following:—  
“repealed, but the waivers executed under the subsection now repealed are null and void.”

Further consideration of the Motion and the Bills was adjourned *SINE DIE*.

At 12.00 Noon, The Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,  
*Clerk of the Committee.*

THURSDAY, March 31st, 1960.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 A.M.

*Present:* The Honourable Senators: Aseltine, Beaubien, Brunt, Burchill, Crerar, Gershaw, Golding, Gouin, Haig, Horner, Kinley, Lambert, Leonard, Macdonald, McDonald, Power, Reid, Taylor (*Norfolk*), Wall, White and Woodrow—21.

In the absence of the Chairman, the Honourable Senator Thomas Reid was elected Acting Chairman.

*In attendance:* Mr. E. Russel Hopkins, Senate Law Clerk and Parliamentary Counsel; the Official Reporters of the Senate and Mr. H. M. Jones, Director of Indian Affairs, Department of Citizenship and Immigration.

Consideration of the following Bills was resumed.

C-2, An Act to amend the Indian Act.

C-3, An Act to amend the Canada Elections Act.

The Honourable Ellen L. Fairclough, Minister of Citizenship and Immigration was heard in explanation of the Bills.

After discussion and on motion of the Honourable Senator Leonard, on behalf of the Honourable Senator Croll, the Motion to amend line 5 of Bill C-2 was withdrawn.

It was Resolved to report the Bills without any amendment.

At 10.30 A.M. the Committee adjourned to the call of the Chairman.

Attest,

A. Fortier,  
*Clerk of the Committee.*



## THE SENATE

### STANDING COMMITTEE ON BANKING AND COMMERCE

#### EVIDENCE

OTTAWA, Wednesday, March 23, 1960.

The Standing Committee on Banking and Commerce, to which was referred Bill C-2, an act to amend the Indian Act, and Bill C-3, and act to amend the Canada Elections Act, met this day at 10.30 a.m.

Senator **SALTER HAYDEN** (*Chairman*) in the Chair.

The **CHAIRMAN**: Senators, we have two public bills before us now, Bill C-2, to amend the Indian Act, and Bill C-3, to amend the Canada Elections Act. When we are dealing with these two bills, although we may refer to either C-2 or C-3, whatever we say about one applies to the other, so that when we are through, whatever we have said, I would assume that we shall be ready for the question on both bills.

There is a reporter present. Is there a motion to report the proceedings on these two bills?

Senator **ASELTINE**: I so move.

Motion agreed to.

The **CHAIRMAN**: Is there a mover that authority be granted for the printing of 800 copies in English and 200 copies in French of the committee's proceedings on both these bills?

Hon. Mr. **ASELTINE**: Agreed.

Senator **ROLL**: Mr. Chairman, in connection with this Bill C-2, to amend the Indian Act, the explanatory notes indicate that there were some Indians who signed a waiver under that section of the act which gave the right to vote, but that made them liable for income tax. This bill repeals that section. There is a great deal of apprehension as to whether those waivers are effective by the repeal or whether they are not. It may be that what I have to offer is redundant, but because there is some apprehension amongst the Indians as to whether this has the effect they think it has, and being rightfully suspicious of some of the acts that have been done by Parliament in the course of years, I think this is an opportunity to clarify it; and I am suggesting this, that in the first section, after the word "repealed", there be added these words:

"But the waivers executed under the subsection now repealed are hereby cancelled for all future intents and purposes."

I think that will make it abundantly clear and beyond peradventure.

The **CHAIRMAN**: Just let us analyze that for a moment. Let us assume that an amendment in the form in which we have it becomes law. Then this provision in the Canada Elections Act requiring the execution of a waiver as a condition to being eligible to be put on the voters list disappears?

Senator **ROLL**: Yes.

The **CHAIRMAN**: So that from here on that is no part of the election law and an Indian is eligible to have his name on the voters list if he chooses to without signing a waiver?

Senator **ROLL**: That is right.

The **CHAIRMAN**: Then what you have proposed is that the waivers that have already been signed may still carry on in some fashion?

Senator **ROLL**: No, that the waivers signed are of no effect. But what you have reference to is the subsequent act?

The **CHAIRMAN**: Yes.

Senator CROLL: Or course, I do not know anything about the Elections Act until I come to it. I am at the moment concerned with the Indian Act, and the Elections Act comes afterwards.

The CHAIRMAN: We have to look at both of them to see that they are correlative.

Senator CROLL: They do not appear to be correlative at all. They are two independent acts, the one separate from the other. I think the effect is the same, but they have no reference to each other.

Senator ASELTINE: I think that when the acts are passed that automatically takes place, and that is the opinion of the Department of Justice.

Senator CROLL: I do not argue with you that that is the opinion of the Department of Justice, and if you asked me to accept that I would say that I would accept that as being proper opinion; but I am not an Indian, and the Indians do not feel the same way about it, from anything I can gather. I think it should be made abundantly clear to them that it was not intended that they should be held to those waivers they signed for a purpose which came to them subsequently.

The CHAIRMAN: Let us look at it for a moment. When they sign a waiver that is so that the Indian may be eligible to get his name on the voters list in connection with that particular election, is it not?

Senator CROLL: Yes. It is a general waiver.

Senator BRUNT: I don't know. I think we should hear from someone in the department on this.

Senator CROLL: It is a general waiver.

Senator MACDONALD: There is no doubt about it that it is a general waiver.

The CHAIRMAN: Section 14, subsection 1 of the Canada Elections Act says:

Except as hereinafter provided, every person in Canada, man or woman, is entitled to have his or her name included in the list of electors prepared for the polling division in which he or she was ordinarily resident on the date of the issue of the writ ordering an election in the electoral district, and is qualified to vote in such polling division, if he or she

Then coming down to subsection (2), it says:

The following persons are disqualified from voting at an election and incapable of being registered as electors and shall not vote nor be so registered, that is to say,

(e) every Indian, as defined in the Indian Act, ordinarily resident on a reserve, unless,

and then (i) deals with war service; and (ii) says, unless:

he executed a waiver, in a form prescribed by the Minister of Citizenship and Immigration, of exemptions under the Indian Act from taxation on and in respect of personal property, and subsequent to the execution of such waiver a writ has issued ordering an election in any electoral district;

Now, the waiver is to be applied in relation to a writ of election that may be issued afterwards. The moment you take this requirement to get rid of disqualification out of the law it is a nullity thereafter.

Senator CROLL: Well, as a lawyer, I cannot argue that point too strongly as to its being a nullity. I do not argue that, and I would have accepted it; but, for instance, on the floor of the house there was apprehension about that by someone who is more qualified than perhaps I am, or some of the rest of us are. There is a general apprehension about it, and since my suggestion does

not take away and merely clarifies, what objection could there possibly be to making it clear beyond any doubt?

The CHAIRMAN: In effect, you are suggesting a declaration following the provision for repeal saying that waivers heretofore executed under this section now repealed are no further in force or effect?

Senator CROLL: Exactly.

Senator KINLEY: Or ever shall be.

The CHAIRMAN: I think he will be satisfied to say a nullity.

Senator ASELTIME: This is being reported, Mr. Chairman, and any person interested, any Indian, will have this report to refer to and with the explanation which you have given, and which I entirely agree with, I cannot see that there is any doubt whatever in the mind of anybody, nor could be, and I would not want to accept the amendment of Senator Croll on that account.

The CHAIRMAN: Well, as I understand Senator Croll's amendment it is not for the purpose of interfering in any way with the scope of the amendment that is in this bill, it is only to make, shall we say, abundantly clear to people who are not as trained in reading law as we may be here that the waivers that are in existence will be meaningless when this amendment passes into law; it is not adding anything, it is not taking anything away, it is simply making it abundantly clear, and so may be of some value, I do not know. It is not adding anything, it is not taking anything away, it is only making it abundantly clear. Of course we are not wedded to the exact wording.

Senator KINLEY: Will you read it again? It seems to be a mouthful.

The CHAIRMAN: What Senator Croll suggested was, "But the waivers executed under this subsection now repealed are now hereby cancelled for all intents and purposes."

Senator CROLL: No, Mr. Chairman, that is not it. What I suggest is: "But the waivers executed under the subsection now repealed are hereby cancelled for all future intents and purposes."

Senator LEONARD: Mr. Chairman, would not the words "... and the waivers executed under the subsection now repealed are now null and void" suffice?

Senator BRUNT: Why all the extra words?

Senator CROLL: The words, "are now null and void" are acceptable to me.

Senator LEONARD: If the words, "null and void" are used, it makes it so that he who runs may read. I do not know whether the waiver that is signed waiving exemptions is now made null and void by this.

Senator HAIG: Mr. Chairman, the whole argument on this section has taken place in the other house. If we repeal this section then in future no more waivers can be given. The only thing we are trying to do here is to say to the Indian, "You do not understand legislation as well as the white man and so we are going to make it abundantly clear for you." Now, the Indians do not like that statement. I do not think that we, as legislators, should put in an act a definition that we know does not mean anything to us, that we don't need at all, and we are just doing it because we think the Indian is too ignorant to understand. I don't believe we should do that. There will not be one Indian in a thousand who will be affected by that because the other Indians will tell him. I was brought up as a boy right next to an Indian reserve, and the chief of that reserve was the master of all their affairs. If you were dealing with an Indian you had to get the approval of the chief before you could get very far with the Indian. It is just the same with our own people: In every village there are a few men in every party who are very strong, who know the people and advise them, and they are very effective at election time, although they may not always win. Now I say here that we should not interfere with



the bill especially in view of the fact that, first, the Minister of Justice has said they do not need it, and secondly, the House of Commons has passed it, and they are the representatives of the people, and they say they don't need it, but we say that the Indians are so ignorant that they cannot understand it, so we will put it in so that these ignorant people will understand it. I do not think we should do that at all.

Senator REID: Why say that the Indians are ignorant of what is in the bill? Half of this committee don't understand it.

Senator ASELTINE: It is perfectly clear to me.

Senator REID: It is as clear as mud to me.

The CHAIRMAN: I was going to tell you that we have here this morning from the Department of Indian Affairs Mr. H. M. Jones, who is the Director of Indian Affairs, accompanied by Mr. Brown, who is special assistant to the director.

Senator ASELTINE: Let us hear Mr. Jones.

H. M. JONES, *Director of Indian Affairs*: Mr. Chairman,—

Senator CRERAR: Mr. Chairman, unfortunately I was not able to be in the house when discussion on second reading of this bill took place. I think it would be useful to the committee if Mr. Jones would tell us first of all what the present situation is. As I understand it, an Indian on a reserve can secure the franchise if he gives a waiver so far as taxation is concerned.

The CHAIRMAN: On his personal property.

Senator CRERAR: Does that waiver apply to income tax, for instance?

The CHAIRMAN: It would apply to anything.

Senator CRERAR: Any tax at all—personal income tax, sales tax or any other kind of a tax?

Senator CROLL: He does pay sales tax now.

Senator CRERAR: I think this point is rather important. As I understand it, if an Indian gives a waiver then he is subject to the payment of any tax that may be levied.

The CHAIRMAN: To the extent that they might be related to his personal property.

Senator CRERAR: What about sales tax?

The CHAIRMAN: Of course everybody pays sales tax, it is inherent in the price.

Senator CRERAR: What about income tax?

The CHAIRMAN: He has to have the income first.

Senator CRERAR: Well, supposing that he has the income.

The CHAIRMAN: Then if he signs a waiver, he is subject to the tax.

Senator CRERAR: He could be taxed on his income if he signs a waiver?

The CHAIRMAN: Yes.

Senator CRERAR: But if he does not sign a waiver then he is not subject to it?

The CHAIRMAN: That is right.

Senator CRERAR: That is a good point.

Senator MACDONALD: And he cannot vote at the present time.

Senator CRERAR: The principle of the thing is an important matter. What this legislation purports to do is to remove those handicaps, and the Indian on the reserve secures the right to vote and still retains his right to exemption on personal property tax and upon income tax, is that correct?

The CHAIRMAN: Yes.

Senator CRERAR: Well, now, that is a principle that I think is of very doubtful value, of very doubtful value indeed. The Indians today can secure the franchise, in other words, the right to vote, and that right is evidence of the full stature of citizenship. He can do that today by a very simple process, but if he refuses to waive the right to taxation then he remains an Indian under the law and continues to have all the rights he secured under treaty. Now, it seems to me—and it is the point I would like to have explained—that that introduces a form of discrimination. Why should the Indian living on a reserve earning an income have the right to vote without being subject to taxation, while the man immediately off the reserve does not enjoy that privilege. Now, it seems to me there is a door there that is very important, and this will apply, for instance, to treaty Indians who are the beneficiaries of treaty money and a vast number of our Indians are in that position.

The CHAIRMAN: May I interrupt here, Senator Crerar? I would take it we must assume that whatever treaties were made, that there was consideration passing both ways, and therefore it is not an element that was we should consider here.

Senator CRERAR: I submit, Mr. Chairman, that the analogy you draw is wholly suitable to the case we are considering.

The CHAIRMAN: It is factual.

Senator CRERAR: It must be remembered that the Indians surrendered their property by treaty. They made a treaty with the Government of the day and under that treaty they were enabled to secure certain advantages and on the other hand they gave up the right to roam at will all over the country. Now, in consideration of that the Government undertook and has faithfully discharged the duty of paying them treaty money ever since.

Senator BRUNT: But let us not forget one very important thing, that when they signed that treaty there was no income tax in this country.

Senator CRERAR: I am not talking about income tax, I am talking about the feature of treaty money. So you will have a situation where, if this amendment to the bill goes through, the Indian on a reserve draws treaty money and can still exercise all the responsibilities of citizenship. Now, my point is if he is going to exercise all the responsibilities of citizenship which are implicit in the right to vote, then does it make sense to say that we will continue paying him treaty money. This is a point that, had I been in the House, I would have certainly have raised it on second reading of the measure. What we are in effect doing here in passing this legislation is setting up a discrimination between Indians on the one hand and ordinary citizens on the other.

Senator BRUNT: We are extending a privilege to the Indians.

Senator McKEEN: On that point, for clarification, I would like to ask if an Indian living on a reservation moves off that reservation makes some income, and moves back, is he still subject to income tax on the money he has earned?

Senator CRERAR: There is no doubt about it.

The CHAIRMAN: That is correct.

Senator CRERAR: But supposing he is on the reserve and earns \$10,000 or \$20,000, no matter how he earns it, what you are doing under this legislation—coming back to the income tax aspect of it—is giving him an exemption from paying taxes, and at the same time giving him all the rights of citizenship. There is an inconsistency there.

Senator BRUNT: When he made his agreement there was no income tax in this country.

Senator CRERAR: When the ordinary citizen established his business, or started farming, or operating a grocery store, or any other class of business, there was no income tax.

Senator BRUNT: But the ordinary citizen did not give great parts of Canada away. These Indians had large tracts of land which were taken from them.

Senator CRERAR: What you are doing here is setting up a discrimination; you are bestowing an advantage or a favour upon Indians in certain circumstances, which their neighbours across the reserve cannot get.

Senator BRUNT: After all, they had this country before we came.

Senator CRERAR: This is evidence of the lighthearted way in which we approach legislation of this kind. I had the administration of Indian Affairs for a great number of years, and I hope I do not sound egotistical if I say I learned at least a little bit about it. The fact remains, the Indian today can stay on his reserve, he can exercise the right to vote, he can assume all the advantages of citizenship, if he signs a waiver that he will not be exempt from taxation. Now what you are proposing to do is sweep all that away.

Senator BRUNT: Yes, give him something in addition to what he already has.

Senator CRERAR: I submit it creates a discrimination that should not be present in our legislation.

Senator ASELTINE: His land was taken away from him when the treaty was made. In that way he gave consideration for what he is getting now.

Senator CRERAR: Where is that argument advanced in support of this legislation?

Senator ASELTINE: I am just telling you what I think.

Senator CRERAR: That argument, I would hold, is not valid. After all, the Indian entered into treaty arrangements with the Government at the time, and one of the advantages he got from his treaty was that down through the years of the future he would not be subject to taxation. Now you say you are going to sweep all that away, and if the Indian on a reserve establishes a business on the reserve and makes \$100,000 profit out of it, he is free from taxation, and yet he enjoys all the rights of citizenship. I can't see it!

Senator REID: May I ask a question of the official, for information. Has there been any great demand by Indians generally for the vote?

Mr. JONES: Yes, there has, Mr. Chairman.

The CHAIRMAN: How has it been manifested or expressed?

Mr. JONES: I think there are 11 organizations which have favoured the Indians having the right to vote without restrictions, and they represent about 40,000 Indians. There are seven groups who register themselves as opposed to their receiving the vote, and they represent about 4,000. So it is about ten to one in favour.

The CHAIRMAN: What is the total population that we are dealing with who would be affected by this amendment?

Mr. JONES: The present entire population is around 180,000. We estimate the voting population will be about 80,000, of whom 20,000 already have the federal vote.

Senator MACDONALD: How did they get the vote?

Mr. JONES: Veterans of World War I and their wives, veterans of World War II, and the Korean War; those who live in the Northwest Territories,



any Indians not living on reserves, those in the south and living permanently off reserves.

Senator MACDONALD: Do you know how many of the 20,000 voted in the last election?

Mr. JONES: I do not have the statistics.

Senator MACDONALD: I quoted in the House from a report in the Canadian press that very few of the 20,000 voted.

Senator CRERAR: I think that is immaterial, Mr. Chairman, how many voted or did not vote.

Mr. JONES: We have a summary of those who voted in the last provincial election, but I do not have any figures on those of the 20,000 who voted in the federal election.

Senator POWER: What is the argument of those who do not want the franchise, broadly speaking?

Mr. JONES: It seems to be twofold: one comes from a group that is well known to this committee, that appears to have the feeling that they are a sovereign nation.

Senator POWER: That is what I want to get at. Who would they be, the Caughnawaga Indians mostly?

Mr. JONES: The Six Nations.

Senator POWER: That is at Brantford.

Mr. JONES: Brantford, Caughnawaga, St. Regis and Tyendinaga.

Senator POWER: Their contention being that they were allies of the British Crown and not subjects. Is that their story?

Mr. JONES: That is only shared by part of the Six Nations, Mr. Chairman. The elected council at Six Nations, Brantford, have endorsed this federal vote through a resolution of the council.

Senator MACDONALD: What percentage of the Indians living on the Six Nations reserves vote?

Mr. JONES: That is hard to say.

Senator MACDONALD: That is very small, I believe.

Mr. JONES: The elected council say they represent the majority, and the Lon House group say they represent the majority.

Senator MACDONALD: When there is an elected council, is it not true that only a small percentage of those eligible to vote do vote?

Mr. JONES: I think the last vote was around 800 for their own council.

Senator MACDONALD: Out of an eligible vote of 3,000 or 4,000?

Mr. JONES: That is right.

May I finish my answer to Senator Power? The other groups are afraid something is going to be taken away from them. That is the fear of the minority that are opposed.

Senator POWER: There is one group that still maintains they are a sovereign nation.

Mr. JONES: That is the one group.

Senator POWER: That is, I suppose, the Brantford Indians and the Caughnawaga Indians—have the Hurons from near Quebec expressed any view?

The CHAIRMAN: Mr. Jones said some of those had, but not all of them. Even at Brantford, he said, the elected council supports the amendment.

Senator KINLEY: How do you define an Indian?

Senator TURGEON: Is there any strong opinion with respect to accepting the right to vote federally as opposed to accepting the right to vote provincially? Is there any difference in the Indian opinion?

Mr. JONES: No. Several provinces have given them the right to vote provincially, and we feel that more and more of the Indians are voting in the provincial elections. If they had any fears about losing something we feel they have been pretty well dissipated by that fact.

Senator KINLEY: Mr. Chairman, just who is an Indian? How do you define an Indian?

Mr. JONES: It comes through the male line. It is a bit difficult to describe, but it is set out in Section 11. It follows the male line. It goes back to 1874. A white woman can marry an Indian and become a member of the band, but an Indian girl who marries a white man loses her Indian status. Senator Reid will remember this.

Senator REID: I do.

Senator KINLEY: It comes down through the male line?

Mr. JONES: Yes.

Senator HAIG: Mr. Chairman, might I say a word?

The CHAIRMAN: Certainly.

Senator HAIG: I like what Senator Crerar says. He speaks the truth, but the truth is also that the people of Canada have for some years thought that we have not given the Indians all that they should have. They are people who, under our highly developing system of life, are finding it hard to make a living. Many of us, especially those of us from the Prairies, such as myself, have known Indians all our lives. I have known them since I was a boy of five years, and I am in favour of giving them this right. I know Senator Crerar is right in his principle, but all the same we do give to many worthy causes, and in this case I think we should give something to the Indians, as a matter of fairness to ourselves and to show our feeling of doing right by the Indian. I do not like the principle by which we are doing it, but I think we ought to do it. We are Canadians, and they are living in our country. They have been loyal to Canada right through from the time the agreements were signed. They took part in the First Great War and the Second Great War, and they have lived a very peaceful life with us. I think that the people of Canada are in favour of our giving them this legislation.

Senator REID: All the Indians do not believe that statement. They believe we are living in their country.

The CHAIRMAN: These are all viewpoints. Have you any other questions of Mr. Jones while we have him here? Thank you Mr. Jones. Are you ready for the question? Shall I report the bill without amendment?

Senator HAIG: I so move.

Senator CROLL: There is an amendment.

The CHAIRMAN: Have you settled the form of it?

Senator CROLL: You have it.

The CHAIRMAN: You wish to amend by saying that the waivers executed under this subsection now repealed are hereby cancelled for all intents and purposes.

Senator CROLL: I am willing to accept Senator Leonard's amendment.

Senator LEONARD: And the waivers executed under the subsection now repealed are now null and void.

Senator MACDONALD: I might say, Mr. Chairman, that I have received a number of protests against the change of this law by which the Indians will be

entitled to vote. I am not very impressed with those objections, but I have also had representations from Indians to the effect that it should be clearly stated in the legislation that their rights are not being affected. That could be done by a preamble to the bill, but I do not want to press that either.

However, amongst the representations which I have had from those who do not want the vote the view has been expressed that their rights should be retained. I am going to read from one letter that I received from a number of Indians. It is signed by a number of Indians who oppose the granting of the vote altogether. They say:

"The Government should publicly promise that Indian rights should be respected, and the law should also say the same".

So, we are, in some respects, carrying out that wish of the Indians by the amendment which has been proposed by Senator Croll, and I feel it would be in the interests of our country if that clause were put it. We know there has been some general dissatisfaction and some disturbance amongst some of the Indians across the country. If we can do anything to allay their fears and suspicions then I think we should do it.

The CHAIRMAN: I should point out that so far as the law is concerned, the effect of what we do cancels out, or makes null and void, any of these waivers, if they apply, and it may well be that the intent of this legislation—the intent of the existing provisions in the Canada Elections Act—is such that a waiver may have to be executed each time for every election.

Senator ASELTINE: Yes, that is right.

The CHAIRMAN: In other words, the waiver is only good in connection with the election for which the Indian is seeking to get his name on the voters' list, because the voters' list is built up each time anew. It would certainly be redundant to state something that is the effect of the legislation in any event. I think you had something to say, Senator Aseltine?

Senator ASELTINE: I am wondering if the committee would like to hear the Minister on this point.

The CHAIRMAN: I am in the hands of the committee on that.

Senator BRUNT: Is there any hurry to get the bill through? Is there any great hurry to have this legislation passed, Mr. Jones?

Mr. JONES: I think it is the desire of the Minister to have it passed as soon as possible.

Senator BRUNT: But there is no emergency that we are dealing with here.

The CHAIRMAN: No, except that it is before us and we should deal with it.

Senator KINLEY: This does not affect the provincial franchise.

Senator CRERAR: Not at all.

The CHAIRMAN: No.

Senator ASELTINE: Do you think the Minister would like to be heard on this point?

Senator CRERAR: In any case, we are not likely to have a federal election within the next two or three months.

Senator ASELTINE: I am not in favour of the amendment. I will say that. I am just wondering whether the committee would like to hear from the Minister.

Senator BRUNT: I think I would like to hear from the Minister.

The CHAIRMAN: Surely, we can resolve this question one way or another here ourselves. What more light can we get on it? I think the law is clear. When this amendment in the form in which it is in the bill comes into force the waivers are not any longer of any force and effect. I think that is clear as



a matter of law. I think, too, as a matter of law that a waiver form dies after the election in which it is used.

Senator MACDONALD: Is not that very doubtful?

The CHAIRMAN: I do not think so.

Senator MACDONALD: From the second part of the act which you read I think it is quite doubtful.

The CHAIRMAN: I must respect my friend's opinion, but I have to give some meaning to it.

Senator MACDONALD: I also respect yours.

The CHAIRMAN: I have to give some meaning to what is said here. It says that an Indian is disqualified unless:

"he executed a waiver, in a form prescribed by the Minister of Citizenship and Immigration, of exemptions under the Indian Act from taxation on and in respect of personal property, and subsequent to the execution of such waiver a writ has issued ordering an election in any electoral district."

Therefore, the waiver is tied in, and must be executed before the issuance of a writ in an electoral district. The main body of the section which I read to you has to do with settling the voters' list for an election in an electoral district.

Senator MACDONALD: Yes, but—

Senator LEONARD: Could we not see the form of waiver? Has the chairman seen a form of waiver?

The CHAIRMAN: Have you a form of waiver?

Mr. JONES: I am sorry, I have not.

Senator WALL: May I suggest that if your interpretation is correct then the 122 people who have executed waivers must have executed them several times.

The CHAIRMAN: Not several times in each election, I hope.

Senator WALL: I mean several times for the successive elections.

Senator MACDONALD: I think Mr. Jones will bear me out, that they sign one waiver, and it applies to each election.

The CHAIRMAN: I do not think it does.

Senator MACDONALD: That is the practice in the department.

Mr. JONES: Our interpretation is that once you sign a waiver it is good for all federal elections.

The CHAIRMAN: I do not think that is so, as a matter of law.

Senator MACDONALD: That is another example of why we should have what we are doing made abundantly clear.

Senator BRUNT: I think this amendment was discussed in the other house and it was violently opposed over there by the Government. I have had no explanation yet as to why the Government opposed it, but I would like to adjourn our consideration of this bill until we hear from the minister. There must be reasons for opposing this change.

Senator CROLL: That is not quite the situation. It was turned down in the other house by the Chairman on the ground of redundancy and being out of order. What the Chairman said when a motion similar to this was proposed in amendment was that it was redundant and he claimed it to be out of order. Someone offered another amendment and he said it was redundant too. I admitted today that this is redundant. There is no question about that in my mind, but the point I made was that it was for clarification and putting at ease the minds of these Indians who seem to be not at ease at all with the things



we do, and that other Parliaments have done for a great number of years. That is all there is to it. It is merely for purposes of clarification. It does not do any harm and it satisfies a great number of people who want to be satisfied. We want to show them that we are dealing with them fairly and aboveboard.

The CHAIRMAN: Senator Croll, I think the purpose of the amendment which you propose is very clear. I do not see how anything more can be added one way or another. The committee is intelligent and can either vote for the amendment or against it.

Senator LEONARD: If the Leader of the Government (Hon. Mr. Aseltine) would like to have the minister in charge of this legislation appear before the committee, then I think we should see that that is done.

The CHAIRMAN: Oh yes, if he makes that request.

Senator ASELTINE: That was more or less the suggestion I made. I did not put it in a definite way but I thought the committee might want to hear what the minister has to say on this point before we vote on the amendment. I am opposed to the amendment myself.

Senator REID: Bearing in mind the suspicions of the Indians and the difficulty they have, anything we can do to make our language more clear to them should be done by this committee irrespective of what was done in the other place.

The CHAIRMAN: We are not bound by what they do in the House of Commons, and we have indicated that from time to time.

Senator MACDONALD: I think we should respect the view of the Leader of the Government. If he says he would like the minister to come, I think we should see that that is done. He has not said so yet. As I understood it he asked a question as to whether the minister wanted to come.

The CHAIRMAN: No, whether the committee would like to hear the minister. I am satisfied that the committee would accept a proposal by the Leader of the Government that the minister be asked to come here.

Senator ASELTINE: I think it would be a good idea and I make that suggestion.

Senator REID: I would suggest that if the minister does come that she be asked her general views on the legislation.

The CHAIRMAN: Yes, once the minister comes to make a statement she is subject to the questioning of the committee.

Senator HAIG: I move we adjourn to the call of the Chair.

The committee thereupon adjourned.

---

OTTAWA, Thursday, March 31, 1960.

The Standing Committee on Banking and Commerce, to which was referred Bill C-2, an act to amend the Indian Act, and Bill C-3, an act to amend the Canada Elections Act, met this day at 9.30 a.m.

Senator ASELTINE: In the absence of the Chairman, I would suggest that Senator REID be asked to take the Chair as Acting Chairman.

Hon. SENATORS: Agreed.

Senator THOMAS REID (*Acting Chairman*) in the Chair.

Senator ASELTINE: We are honoured by having the Minister of Citizenship and Immigration with us to deal with these two bills, and we welcome her. We welcome you, Madame Minister, and I am quite sure that when you

get through explaining the bill to the committee they will give the most careful consideration to what you have said.

Senator MACDONALD: I join with the Government in welcoming the Minister. It is the first time she has appeared before this committee and on that account we give her a special welcome. Secondly, we welcome her because she is a woman and I might say she is not quite so lonely in the Senate as she is in the House of Commons because we are fortunate enough to have a few more ladies in the Senate than there are in the other house. I join with the Leader of the Government in welcoming the Minister of Citizenship and Immigration and, as he has said, I am sure that what she has to say concerning these bills will be given every consideration.

The ACTING CHAIRMAN: The real purpose of the meeting is to have some explanation of the bill from you, Madame Minister, and we should be pleased indeed if you would address us now.

The Honourable Ellen Louks FAIRCLOUGH, Minister of Citizenship and Immigration: Mr. Chairman and gentlemen, I am sorry I was unable to be with you at the last meeting when you considered these bills. I read the transcript of the proceedings and I think possibly there have been some misapprehensions, based on the feeling that there may be a strong sentiment among the Indians with reference to these waivers which now exist.

This whole matter of the existing waivers was considered very carefully by the Department and also by the legal officers of the Department and, as those of you will know who read the Hansard of the House of Commons dealing with the discussion there, it is the opinion of the Department of Justice that these waivers are null and void once this bill is passed. There was considerable discussion with reference to placing in the bill itself something with regard to the waivers, but it was decided that the insertion of any such provision would be redundant and the Speaker of the Commons ruled that for the reasons that he set out in his ruling he could not accept any such amendment.

Senator MACDONALD: That was the Deputy Speaker, was it not?

Hon. Mrs. FAIRCLOUGH: It could have been; I have forgotten who was in the Chair at the time. The fact of the matter is that there are just 122 of these waivers. We could easily find out whether all these people are still living, but I do not think we know at headquarters at the present time. Most of them came from the west. We have had no word from any of them, but there have been other inquiries. There seems to have been no particular apprehension on their part; the only apprehension appears to have been on the part of some members of the House of Commons and of the Senate. I can assure you, as I assured the members of the House of Commons, that there is no intention at all to exercise these waivers, and in fact we would have no basis for exercising them once this bill is passed, so that to put anything of this nature into the bill would mean that you were referring to something which no longer exists and it would only create confusion in the minds of those who might refer to the act in the future.

I believe this was the main subject of conversation with reference to this bill. I make that short explanation now. If any members have any questions to ask about it, or any opinions to express, I shall be glad to discuss them.

The ACTING CHAIRMAN: Would any senator like to ask any question of the Minister?

Senator WALL: There is another problem that I should like to bring up, but I will wait until this is disposed of.

Senator MACDONALD: I have a number of letters from Indians who object to the passing of this bill, and object strenuously to being enfranchised, and

in some of those letters there is reference to waivers. The Indians appear to be concerned as to whether these waivers are in effect.

I understood the Minister to say that there is an opinion in the Department of Justice that they will no longer be in effect; but, as I said in the House, the Courts do not always uphold the opinion of the Department of Justice.

Senator ASELTINE: The same applies to the opinion of Senator Hayden who mentioned this at the last meeting.

Senator MACDONALD: Senator Hayden did mention it at the last meeting, but his opinion was based on his conception of the enforcement of this provision of the act. He thought that a waiver was obtained before each election and he based his opinion on that assumption which we found out later to be incorrect.

Senator BRUNT: That was his interpretation.

Senator MACDONALD: The waiver is signed once and it applies for all time.

Senator BRUNT: That is the way it is interpreted, but that is not necessarily the correct interpretation.

Senator MACDONALD: That is the difficulty. You have different interpretations, and that is one of the problems the Indians are faced with. They hear different interpretations. The result is that the Indians, or at any rate a number of the Indians, are quite suspicious of what is being done and this suspicion has existed for many years. I think it is the consensus of the committee—I should say it was at the last meeting—that if something could be put in the bill, an amendment of some sort, to make it definite that the waivers are of no effect it would tend to create a better feeling among the Indians generally in the country. That is the only reason we put it in. We did it with the idea that it would be easier for the Department and, therefore, for the Minister to administer the Indian Act and we felt that no harm could come from it, but only good.

Hon. Mrs. FAIRCLOUGH: I do not think I can agree with you sir, with all respect. It would be only confusing. You spoke about letters you had received from the Indians. I wonder if you would have any idea whether any Indian in particular who wrote to you had himself exercised the waiver. I say that because, as you know, and you know a great deal about Indians inasmuch as you live close to them, rumour and conjecture play a strong part in their everyday life and they come up with wild stories sometimes, stories which have no basis in fact. I am sure Senator Crerar would agree with me in that respect.

As a matter of fact there were only 122 waivers signed altogether, and a large proportion of them were in the west. I presume your letters would be from the Six Nations Indians who live around Brantford.

Senator MACDONALD: No, they do not happen to be, not all of them. Some of them are from the west.

Hon. Mrs. FAIRCLOUGH: Do they specifically mention waivers?

Senator MACDONALD: One of them does, right here.

Hon. Mrs. FAIRCLOUGH: I have had no letter from any Indian inquiring about the waiver. Had I received such a letter I would have immediately written to him and told him the waiver would be of no effect after this bill is passed. This has been stated on many occasions. It was stated by the Prime Minister and I, myself, have repeated it quite often—I have done so in the House of Commons. It is part of the record of the House and having regard to the frequency with which the statement has been made, and the fact that it is on the record, I do not think that any Court would hold that the waiver would be in effect when there was no provision in the act for the execution of waivers.



Senator MACDONALD: I am sure the Minister knows that what is said in the House is not binding on the Courts.

Hon. Mrs. FAIRCLOUGH: It is an indication of intention.

Senator MACDONALD: It is an indication of intention only; that is all it could be. I have no doubt as to the intention, but unfortunately there are many thousands of Indians throughout the country who, I am satisfied, are doubtful.

Hon. Mrs. FAIRCLOUGH: There are not thousands of Indians who have signed waivers, just a handful.

Senator MACDONALD: But even the ones who have not signed are suspicious. Many who have not signed are suspicious of what the Government has in mind.

Senator BRUNT: I think Senator Leonard has a practical suggestion to offer.

Senator LEONARD: The Minister has said that if she had received any letter from an Indian she would immediately have written to reassure that person with respect to the waiver. We are all agreed on the interpretation of the Act and what it accomplishes, and the only thought in our minds was that we should so provide that he who runs might read and that we could spell it out a little more. If there are only 122 and you know them all, it would not be difficult for the Department to write to all these people. You have their addresses and you could send them a copy of the bill and advise them that the bill renders the waiver null and void. That would clear up all misunderstandings.

Hon. Mrs. FAIRCLOUGH: That would be a simple thing to do, and we would be happy to do it.

Senator BRUNT: That would dispose of the whole thing as far as the 122 are concerned.

Senator LEONARD: That would satisfy me.

Hon. Mrs. FAIRCLOUGH: We would have to inquire whether they were still living, but we could certainly do that.

Senator CRERAR: I am not greatly concerned over the letters the Minister has received. After all, we are not governing this country by letters we get from different quarters. I can recall one instance when I was a Minister and the Government decided upon a certain course of action. As a matter of fact, it was the admission of the Bata Shoe people to Canada, and I received over 5,000 letters protesting against it, and after I got through reading the first two or three of them the others found their way into the waste paper basket and there they stayed.

That is not the criterion on which this legislation should be judged.

Hon. Mrs. FAIRCLOUGH: I agree.

Senator CRERAR: As I understand it, and if I am wrong the Minister will correct me, this measure confers the franchise on every Indian in Canada irrespective of whether he lives on reserves, irrespective of whether or not he is receiving treaty money, and we propose to continue these benefits to him, and at the same time to confer on him the full privilege of citizenship—because, after all, the right to vote is the test of citizenship—and that produces anomalies.

As I mentioned the other day in the committee, an Indian may be living on the Six Nations reserve. He may carry on business there; he may make \$100,000.00 a year in profit, theoretically.

Senator MACDONALD: Not at Brantford. There is no such money as that in that district.

Senator CRERAR: Knowing what I do about the reputation of the citizens of Brantford, it is likely that this hypothetical Indian would not be permitted to keep it.

Senator BRUNT: That disposes of that problem very neatly.

Senator CRERAR: I am making this explanation to define a principle. There is no question about it, my statement is correct. If the Indian citizen is on the reserve he may engage in business, he may make a substantial profit, and we leave him with the franchise and leave him free from taxation, and if he has the vote, that is an inequity. That should not be. If an Indian is to become a full-fledged citizen, then I submit he must accept all the responsibilities of citizenship and not receive these favours.

What we do by doing this, Madame Minister, is to put up a discrimination as between citizens, and that is the principle to which I object. I think it is unsound and will only bring trouble in the future. We assume that our Indians today are rather at a low level in the economic scale; but what may happen 25 or 50 years from now? They may rise in the economic scale.

Senator McDONALD: Some have already risen.

Senator CRERAR: Yes; and here we are now putting into the law a discrimination which the Minister would have some difficulty removing in the future. It could lead to all sorts of complications and trouble.

My objection, Madame Minister, is not based on any letters you may have received; it is based upon a principle implicit in the legislation itself, which I submit to the committee is an unsound principle.

Hon. Mrs. FAIRCLOUGH: It is a principle which is not unknown because there are many cases under the income tax law where monies received for certain purposes are exempt from taxation and sometimes those monies come from the Crown. One that comes to my mind immediately is payments under the workmen's compensation, which are deemed to be non-taxable in the hands of the receiver. Indians at the present time pay income tax on monies which they earn off the reserve, but where they earn monies on the reserve that income is exempt from taxation and we do not propose to alter that. But that is not within the competence of his Department.

Without going into detail on this, I do not think I can quite agree with you, sir, that this will create much of an anomaly, though there may be some aspects that might suggest that. It seems to me our main problem is to bring the Indian up to the same standard as the non-Indian and to give him the privileges which the non-Indian has, and I am sure he has a long way to go yet in most parts of the country. This is an educational process. We hope that, having the vote and being eligible to participate actively in the formation of Government, he will realize that one more step has been taken in his education.

Senator MACDONALD: I am inclined to agree with the Minister in so far as taxation is concerned. I would not agree that the Indians who live on the reserves should be required to pay income tax. I would be strongly opposed to that. We must never forget that the Indians inhabited this country long before we came here. We have taken over the land which they occupied. I know that in the district from which I come the Indians came into Canada on the understanding that they would own the land from the source of the Grand river to its mouth to the extent of six miles on each side of the river. How much land have they now? They have a comparatively small reserve to the southeasterly part of the city of Brantford.

Senator KINLEY: How did they dispose of it?

Senator MACDONALD: The Government has taken over the land and, of course, it is occupied by cities and towns which are now very prosperous and industrious, producing very considerable income for the citizens of Canada.

Senator KINLEY: Was there some compensation?

Senator MACDONALD: There was some compensation which is held by the Department. It is invested and a comparatively small revenue comes from it

which is distributed to the Indians of the reserve, but it is a very small amount indeed.

The Minister has said that the Indians who live off the reserve are subject to the taxation laws of the country.

Hon. Mrs. FAIRCLOUGH: Even those who live on the reserve are subject to taxation on monies they earn off the reserve.

Senator CRERAR: That is right.

Senator MACDONALD: The Indians who live off the reserve are subject to taxation of every kind and the Indians who live on the reserve are subject to taxation on the money they earn off the reserve, and in order to be fair to the Indians I think we must say that the Indians pay a fair share of indirect taxation—sales taxation, for example.

Senator BRUNT: And excise.

Senator MACDONALD: Yes, customs and excise taxation. In that regard the Indians pay their share as well as any one else, but while they make their home on the reserve, notwithstanding what Senator Crerar has said, there is no opportunity for them to make much money there at the present time.

Senator HORNER: A man might be in business within the reserve while a great deal of the money he made might be classifiable as income earned off the reserve. Suppose he made money in business from the surrounding country off the reserve: he would be liable to income tax.

Senator CRERAR: He is liable to income tax if he makes earnings off the reserve. I was speaking of business that might be established on the reserve. I do not think it is wise to put forward any argument that might be open to the construction that we had in effect robbed the Indians of their country.

Senator MACDONALD: I did not suggest that, and I do not think that anything I said could be so construed.

Senator CRERAR: If that is to be a consideration now in giving them the franchise, because we did them an injustice in the past, then for heaven's sake let us write it into the preamble of the bill and be honest about it.

Senator BRUNT: Surely, the senator is not serious in that suggestion.

Senator CRERAR: No; I was objecting to my leader's remarks.

Senator McDONALD: Are we correct, Madame Minister, in supposing that the Indians have had this bill explained to them? Are they aware of the consequences of the bill? Has it been put before them in earnest fashion so that they know what will flow from it?

Hon. Mrs. FAIRCLOUGH: I think the shoe is on the other foot. The Indians have been making representations for many years to the Department to be permitted to vote, and perhaps you know that they do in fact vote in four of the provinces. As a matter of fact, we gave a great deal of study to this before we brought it in. I have returns from various provinces indicating the number of Indians who had been eligible to vote and the numbers who had in fact voted. When it became apparent that they were interested to the extent of exercising the franchise in numbers that compared very favourably with the percentage of the vote which is exercised in the non-Indian community, and having regard to the representations that have been made over the years, it was decided to give the vote to the Indians despite the fact that there are certain groups of Indians who, as has been said, do not wish to vote and are apprehensive of it. As you know, Mr. Chairman, there is no such thing as compulsory voting in Canada. If they do not wish to vote, that is their privilege.

Senator McDONALD: There is a reserve in my constituency and we find that by going to them and explaining properly any matter in which they may



be involved we can usually make them understand. I was wondering if a concerted effort had been made by the Department to explain this situation.

Hon. Mrs. FAIRCLOUGH: No concerted effort was made, but the matter was explained by the field officers.

Senator WALL: I should like to bring to the attention of honourable senators another problem which is inherent in this bill, and I would refer to the remarks of the sponsor of the bill in the Senate. The Honourable Senator Gladstone, in the context of the granting of the federal franchise to Indians, said: "Perhaps the greatest fear at the present time is the existence of section 112 of the Indian Act," and then he went on to discuss what section 112 does. Section 112 of the Indian Act gives power to the Minister to: "... appoint a committee to inquire into and report upon the desirability of enfranchising within the meaning of this act an Indian or a Band, whether or not the Indian or the Band has applied for enfranchisement". The Honourable Senator Gladstone ended his remarks by saying, with reference to that section: "As long as Section 112 remains in the act, it hangs over their heads as a threat. The sooner this section is removed from the act, the sooner the Government will start to re-establish its trust with my people". When the honourable senator brought that to the attention of the house I had intervened briefly and said I could not understand why, if subsection 2 of section 86 of the Indian Act was being repealed, section 112 was not also included in Bill C-2 and being repealed in the normal course, especially in view of the fact that both the preceding Minister of Citizenship and Immigration and the present Minister, have in fact, made it appear that this section is redundant in the act since it will never be used. If it will never be used, and if it is causing concern, especially in view of the granting of the franchise and having regard to the many interesting events that are occurring elsewhere in the world, I have been thinking a great deal about this and I am going to move now that we include in Bill C-2 another section which will repeal section 112 of the Indian Act. That section may be called section 2, and section 2 may be called section 3. I do now so move formally.

Senator MACDONALD: What does section 112 do?

Senator WALL: Section 112 gives the statutory right to the Minister unilaterally, really—that is what it means, although it would not happen that way—to appoint a committee of three, namely, a judge or a retired judge or a Superior, Surrogate, District or County Court, an officer of the Department, and a member of the Band to inquire into and report upon the desirability of enfranchising within the meaning of the act an Indian or a Band, whether or not the Indian or the Band has applied for enfranchisement; and enfranchisement, in sections 108 on, as I read them and as they appear to my non-legal mind, have to do with taking away from them their probable right. In view of the fact that there is such concern about this, and bearing in mind what was said by the honourable senator who sponsored the bill, I think it is perfectly logical for us to include that addition, to repeal section 112 of the Indian Act.

The ACTING CHAIRMAN: Will you please repeat the motion so that we shall get it down?

Senator WALL: I have not really formulated it, but I would add another section to the bill as section 2, which would read: "Section 112 of the Indian Act is hereby repealed" and section 2 would become section 3.

Senator MACDONALD: That sounds reasonable enough.

Hon. Mrs. FAIRCLOUGH: I have sat in the joint committee, which met last year and which will reconvene shortly, and there I made this statement that it was my intention to remove this section from the act. It has never been

used and there is no intention of using it, and I think it is unfortunate that it was ever put in the act in the first place. There are, however, parts of section 112 that we might require, as that is the only section under this enfranchisement division of the act which permits the setting up of a committee. If you go back to section 108, for instance, if a person applies for an enfranchisement someone has to look over the application. That is a minor point, but the reason we did not deal with section 112 at this time is that one of the duties of the joint committee will be to look at the whole of the enfranchisement section to see what we shall do with it.

In my opinion, it is regrettable that the section was called an enfranchisement section because that has been one of the bases for misunderstanding of the intent all the way through the piece, as far as I am concerned. The non-Indian confuses the word "enfranchisement" with the procurement of the vote, whereas under the act enfranchisement means that the individual takes his share of the Band funds and lives off the reserve and the fact that he thereby obtains the right to vote in elections is just a byproduct of his action. His action is much deeper and more serious than actually obtaining the vote. Section 112 cannot by itself be removed from the act or, if it is, then in my opinion, speaking like Senator Wall without benefit of legal training, some provision would have to be made for setting up the machinery for the examination of applications which are received under sections 108, 109, 110 and so on. It is my intention to have this offending section removed, but it must be examined by the joint committee and that is one of the tasks which we have assigned to them.

Senator WALL: I was going to suggest, with respect, that section 108 contains nothing that precludes the setting up of a committee of inquiry.

Senator KINLEY: Have these Indians votes under the statutes of the provinces in the west—British Columbia, Alberta, Saskatchewan and Manitoba?

Hon. Mrs. FAIRCLOUGH: Some of them. They have in Ontario, Manitoba, British Columbia and, I am told, Nova Scotia.

Senator KINLEY: Ever since the American revolution it has been taught that there should be no taxation without representation, but this is the reverse. It seems strange to me that there should be this unanimity of opinion that the Indians should have the vote without taxation. There are no Indians in the riding I used to represent in the House of Commons—none would be affected—so it is not a problem. However, this not only gives the Indian the vote; it, so to speak, dilutes the vote of other citizens of the territory where they do vote. It seems strange to me. It recognizes the full rights of citizenship without responsibility; and there must be some reason which perhaps we are not aware of. I know of an English lad who picked tobacco for awhile. He went to Toronto to do chemical work, but he decided that he could make more money by working in the tobacco fields during harvest and he came back under the impression that the country had been stolen from the Indians. The Indians so employed had imbued him with the idea that the country had been taken from them. I am not trying to prevent discussion, Mr. Chairman, but can we not get down to the amendment?

The ACTING CHAIRMAN: Do you wish to proceed to the amendment, gentlemen?

Senator KINLEY: Is the amendment that Senator Croll moved the other day before the committee?

The ACTING CHAIRMAN: The only amendment is the one moved by Senator Wall.

Senator ASELTINE: The Minister has explained that this whole matter will be taken up in detail by the joint committee and ironed out, and I do not see why we should go into that now.

Senator MACDONALD: I want to say something on the amendment. Senator Wall read section 112 which, it seems, contemplates the appointment of a board consisting of a judge and two other persons to grant enfranchisement. That seems to me to be absolutely unnecessary because by this bill which is before the committee at the present time the Indians are to be enfranchised.

Hon. Mrs. FAIRCLOUGH: It does more than give them the vote.

Senator LAMBERT: The Minister indicated a change in that section, subject to discussions, and I would suggest that we leave it at that.

Senator MACDONALD: It occurred to me while Senator Wall was reading the section and giving his comments upon it that it should be removed from the act, and I think the Minister has concurred in that view.

Senator BRUNT: She said that it should be revised.

Senator MACDONALD: I think the Minister said that the clause should come out, but that there would be changes in some other sections.

Hon. Mrs. FAIRCLOUGH: What I said was, though not in these precise words, that what Senator Wall has described as unilateral action, that is to say, the compulsive feature, should be taken out so that the Minister would no longer have the power specifically to enfranchise an Indian—that is, to remove him from his Band or to remove the Indian from the jurisdiction of the Department and make him in effect a non-Indian. There is no doubt that that power is in section 112 at the present time although it has never been exercised, and I propose to remove it.

Senator LAMBERT: Can the Minister say how many Indians will be affected by this legislation?

Hon. Mrs. FAIRCLOUGH: They could all be affected by the legislation.

Senator LAMBERT: Does the Minister know how many?

Hon. Mrs. FAIRCLOUGH: Are you speaking of 112, or of the vote?

Senator LAMBERT: The applications for enfranchisement.

Hon. Mrs. FAIRCLOUGH: About sixty thousand.

Senator LAMBERT: And there are only 122 with whom we are concerned at the moment?

Hon. Mrs. FAIRCLOUGH: There are 180,000 Indians of all ages. There are possibly 90,000 who are of voting age, and a few already have the vote. These are all round-figures, of course. Those who served in either of the two wars, together with their wives, those who live in remote areas have the vote, those who are up in the north far from heavily populated districts: they have the vote. This adds the rest of them to the list.

Senator LAMBERT: We are familiar with the effect which service in either of the wars has upon the qualifications of Indians in respect of the vote, and that is one reason why careful scrutiny should be made of the effects of this legislation so far as the Indian population as a whole is concerned.

Hon. Mrs. FAIRCLOUGH: One of the anomalies is that those Indians who are now living under the worst conditions in the far north and in the remote sections do now have the privilege of voting.

An Hon. SENATOR: That is, provincially.

Hon. Mrs. FAIRCLOUGH: No, federally and those on the reserves do not have the right to vote. The effect of this, therefore, is to put them all in the same class.

Senator MACDONALD: I gather that it is the intention to have section 112 removed from the Act and at the same time certain other sections will probably be amended.

Hon. Mrs. FAIRCLOUGH: I should think so.



Senator MACDONALD: I think the Minister has so intimated—I do not think it is an undertaking—and in view of the assurance that that will be done, probably that would satisfy the honourable senator. As far as I am concerned, I was quite impressed with his argument and if the Minister had not been here to give the assurance she has, I would press hard for his amendment.

Senator POWER: It occurs to me that the amendment of Senator Wall indicates that even though we may pass this bill there will be some contradiction between the legislation at present in existence, section 112, and this particular legislation we are passing now. May I ask the Minister why the whole thing could not be taken at once. Could we not have one bite of the cherry and put the whole thing before the committee which will be revising the enfranchisement act to make it conform?

Hon. Mrs. FAIRCLOUGH: I do not know whether the honourable senator was in the room when I explained this before, but these are two entirely separate problems. Although this section of the act is called an enfranchisement section, it is not enfranchisement as we understand it, that is, the power to vote, and that alone. It is moving from the Indian all his Indian privileges and compensating him with his share of the Band funds—removing him from the reserve and making him, in effect, a non-Indian.

Senator POWER: I understand the section covers much more than the right to vote. As I understand Senator Wall, there does appear to be a contradiction between what will be Indian Act provisions, the Indian Act after we pass it, and the enfranchisement section. I was wondering why they could not all be dealt with at one time.

Hon. Mrs. FAIRCLOUGH: I cannot agree that there is a contradiction. I think they are two entirely separate problems and they do not conflict. In my opinion, section 112 is wrong and it must be taken out.

Senator POWER: It is wrong on other grounds than those with regard to the right to vote.

Hon. Mrs. FAIRCLOUGH: Yes.

Senator WALL: Where there is life there is hope for the living—

Senator BRUNT: Not much.

Senator WALL: I wish to say respectfully that section 108 of the enfranchisement part of the act gives the Minister the right, on the report of the Minister that an Indian has applied for enfranchisement, which means he wishes to leave the reserve, to take the appropriate action. Such an Indian or a group of Indians, I presume, on the report of the Minister, which can be through a committee of inquiry if the Minister so wishes, can be granted enfranchisement. Section 112 is the offending section, for it gives the Minister the statutory right unilaterally to say that this Indian or this group of Indians shall be enfranchised. It is that section of the act that is giving rise to fear, the fear that was expressed very eloquently by the sponsor of the bill. For that reason, I regret to say that I cannot see my way to withdrawing the motion.

Senator HAIG: We are going a long way in this bill to try a new experiment. The member for Churchill objects to it. Honestly, his objection is one hundred per cent sound. There is no question about it. I do not like to amend this bill at all, and for this reason. This is a brand new experiment, and undoubtedly a year from now the Minister will be met by Indians from different parts of Canada with objection to this section or that section, and she will have to come back another time and get amendments to meet these new requests. The Indians may be satisfied with what we have done, and they may not. I want to see them satisfied and I think we should satisfy them. The Minister says that appropriate sections in the act can be amended to provide the power to

make the appointments. Why go to all that trouble only to find that there are other amendments to be made? Why not leave it until another year.

Senator ASELTINE: The joint committee will sit.

Senator HAIG: Let the joint committee bring in a report when it sits. In the meantime, pass this bill to give the Indians the power to vote if they wish to. We have had voting in Manitoba and there are one or two who control the vote in certain constituencies, and this year there was elected a man who walked up and down the district and simply said, "I am standing for election and if I am elected there will be a road that we can drive on. Vote any way you like, but that is what I am going to do." He got elected; he got more votes than the rest put together. And it is the second time he has done it.

Senator BEAUBIEN: Did he build the road?

Senator HAIG: After he was elected, they asked him which side he was on and he said "Mr. Roblin seems to have the most votes and I am on his side so that I can get the road". That is the situation.

Senator MACDONALD: I do not agree with Senator Haig. The intelligence of the Indians is much higher than he has represented it today. No one can drive down the road in the reserve with which I am familiar and, merely because he puts on a show, get the votes of the Indians. They are intelligent people. Coming back to Senator Wall's amendment, I may appear to be wavering, but I was impressed with what Senator Power said. If this section 112 could be struck out, I think it would be a good thing. It would reassure the Indians and dispel the suspicion there is among them that they will be forced to vote. Senator Power has suggested that it could be done by taking one bite of the cherry. The Minister has said that section 112 has to come out; and that is what I understood at first. She has subsequently spoken and she does not say that 112 will come out, but that it will be amended. I would not approve of that. I do not know why section 112 cannot come out entirely and we could make such amendments as might become necessary in the other sections.

Hon. Mrs. FAIRCLOUGH: You are putting words in my mouth. As I recall it, I made no reference to amending section 112. I said that if it came out it might be necessary to put something in its place which would allow for setting up the necessary machinery to handle sections 108, 109, 110 and 111.

Senator MACDONALD: That would not be in 112.

Hon. Mrs. FAIRCLOUGH: This is all part of one provision dealing with the enfranchisement of Indians. This is a matter that will require a great deal of study. I am sorry that Senator Wall feels he must proceed with his amendment because I assure him that if he does proceed with it, and if perchance it is accepted by Mr. Speaker and should appear in the bill, I fear that what would happen would be this: He would have removed all of the machinery for handling sections 108, 109, 110 and 111, or at least a large part of that machinery. That is our problem, and that is why we wish to handle it before the joint committee and then bring in a properly drafted clause.

Senator POWER: The Minister's contention is that there is no relationship whatsoever with the clause to which Senator Wall objects, that it does not in any way contradict or infringe upon the rights we are now going to give the Indians.

Hon. Mrs. FAIRCLOUGH: There is no conflict.

Senator McDONALD: It would be well to let the joint committee on Indian Affairs do their work on section 112.

Senator KINLEY: Did I understand the Minister to imply that she had some preparatory work to do before this section would be acceptable?

Hon. Mrs. FAIRCLOUGH: Before section 112 is removed, yes.

Senator KINLEY: You have some preparatory work to do.

Hon. Mrs. FAIRCLOUGH: We do not wish to leave ourselves without the necessary machinery in connection with the other sections.

Senator WALL: I do not intend to argue any longer, Mr. Chairman. I am not convinced that sections 108 to 111 have not inherent in them the machinery the Minister has referred to, but I think that in view of what has happened, in view of the statements that have been made, I might withdraw the amendment. I am prepared to withdraw it.

Senator ASELTINE: I move that Bill C-2 and Bill C-3 pass.

Senator LEONARD: In the absence of Senator Croll, who moved the amendment dealing with the addition of the words "And the waivers executed under the subsection now repealed are null and void", which motion, I believe, I seconded, I am prepared to vote for the bill without those words being added, in the light of the assurance that Madame Minister has given us that the 122 persons concerned will be notified of the passing of the bill and the fact that it does make their waivers null and void to the extent indicated.

Senator ASELTINE: I move that these bills be adopted.

The motion was carried.

Senator ASELTINE: This is the first time we have had a Minister of the Crown appear before any of our committees at this session and we appreciate it very much. I should like to thank the Minister.

Senator MACDONALD: I have pleasure in seconding the motion, that this committee express a word of appreciation to the Minister and our thanks to her for her having explained the bill so fully.

Whereupon the meeting was adjourned.















Third Session—Twenty-fourth Parliament  
1960

THE SENATE OF CANADA  
PROCEEDINGS  
OF THE  
STANDING COMMITTEE  
ON  
BANKING AND COMMERCE

To whom was referred the Bill C-65, intituled:  
An Act to amend the Estate Tax Act.

---

The Honourable **SALTER A. HAYDEN**, Chairman

---

WEDNESDAY, JUNE 29, 1960

---

WITNESSES:

Mr. W. I. Linton, Administrator, Estate Tax Branch, Mr. A. L. De Wolf, Solicitor, Department of National Revenue and Mr. E. H. Smith, Department of Finance.

---

REPORT OF THE COMMITTEE

---

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1960

THE STANDING COMMITTEE ON  
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor ( <i>Norfolk</i> )
Connolly ( <i>Ottawa West</i> )	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

---

\* *Ex officio member.*

(Quorum 9)



## ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Tuesday, June 21st, 1960:

Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Hnatyshyn, for second reading of the Bill C-65, intituled: "An Act to amend the Estate Tax Act".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator White moved, for the Honourable Senator Thorvaldson, seconded by the Honourable Senator Brunt, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative.

J. F. MacNEILL,  
*Clerk of the Senate.*

WEDNESDAY, June 29, 1960.

The Standing Committee on Banking and Commerce to whom was referred the Bill (C-65), intituled: "An Act to amend the Estate Tax Act", have in obedience to the order of reference of June 21st, 1960, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,  
*Chairman.*



## MINUTES OF PROCEEDINGS

WEDNESDAY, June 29, 1960.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.45 a.m.

*Present:* The Honourable Senators:—Hayden, Chairman; Aseltine, Crerar, Croll, Dessureault, Euler, Gershaw, Golding, Gouin, Haig, Hugessen, Lambert, Leonard, McKeen, Pratt, Reid, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vailancourt and Woodrow—21.

*In attendance:* Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

---

Bill C-65, An Act to amend the Estate Tax Act, was read and considered clause by clause.

Mr. W. I. Linton, Administrator, Estate Tax Branch, Mr. A. L. De Wolf, Solicitor, both of the Department of National Revenue and Mr. E. H. Smith, of the Department of Finance were heard in explanation of the Bill.

On Motion of the Honourable Senator Aseltine, seconded by the Honourable Senator Haig, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bill.

It was Resolved to report the Bill without any amendment.

At 12.30 p.m. the Committee adjourned to the call of the Chairman.

Attest.

A. Fortier,  
Clerk of the Committee.





# THE SENATE

## STANDING COMMITTEE ON BANKING AND COMMERCE

OTTAWA, Wednesday, June 29, 1960

### EVIDENCE

The Standing Committee on Banking and Commerce, to whom was referred Bill C-65, an Act to amend the Estate Tax Act, met this day at 10 a.m., and at 11.45 a.m. commenced consideration of this bill.

Senator Hayden in the Chair.

The CHAIRMAN: Gentlemen, we have before us now for consideration Bill C-65, an Act to amend the Estate Tax Act.

With us as witnesses we have Mr. W. I. Linton, who is the administrator of the estate tax branch, Department of National Revenue, and Mr. E. H. Smith, from the Department of Finance.

Are there any questions that senators have in mind that they would like to ask before we get into a consideration of the bill clause by clause?

Senator CRERAR: Mr. Chairman, there is one observation I should like to make. On this bill we have explanatory notes of practically all the changes that are proposed in it. On the two previous bills we have been considering this morning we did not have any explanatory notes, and I would suggest that it might be worth while drawing it to the attention of the departments concerned that explanatory notes are very useful and helpful to members of the committee in understanding the proposals advanced.

The CHAIRMAN: Are there any other questions that might be addressed to some particular point? If not, we shall proceed.

Mr. Linton, would you explain briefly what the purpose of clause 1 is—Insurance Proceeds as Death Benefit?

**Mr. W. I. LINTON, Administrator, Estate Tax Branch, Department of National Revenue:**

Mr. Chairman, this provision is designed to ensure that death benefits which are property passing under the act now, do not escape tax by being funded through life insurance.

Senator CROLL: Mr. Chairman, could we have an illustration of that?

Mr. LINTON: An illustration would be that there is some possibility that an employer desiring to pay death benefits to his employees might take out insurance policies on their lives and assign those policies to the wife or child or other beneficiary, pay the premiums and thus provide the death benefit which would be taxable otherwise but which might escape by being insurance falling under the very specific taxation on insurance now in the act under section 3, subsection (1), paragraph (m).

The CHAIRMAN: But in that example, if the benefits under the policy were payable to the wife, the wife could sue the insurance company for the proceeds of that insurance. The estate qua estate would have no right to those proceeds at all.

Mr. LINTON: That is right. There are many things subject to the tax now that the estate could not sue for and this added one more.

The CHAIRMAN: So it is not so much closing a loophole as extending the scope of the act?

Senator CRERAR: Spreading the net further.

The CHAIRMAN: Or making the mesh finer.

Mr. LINTON: That is right.

The CHAIRMAN: Have you run into any of this? What is the purpose of going so far afield?

Mr. LINTON: We have not run into it as far as I know at all, but it did seem a place in the net where there was a hole, the net being designed to catch all death benefits and here was one benefit that would escape, and so the principle on which the act was based had this gap.

The CHAIRMAN: I am curious to know of your using the expression, "death benefit"; it is not a death benefit to the person who died and it is not a death benefit to his estate.

Mr. LINTON: That is true.

The CHAIRMAN: This is an extended definition of a death benefit because the widow or the child or somebody else gets something because somebody dies. Then you are going to gather that into the estate of the person who dies and levy a tax on it?

Mr. LINTON: We would gather in such a benefit payable by the employer to the widow or child, and those too are things that do not form part of the estate proper and we have certainly by this extended the tax to these benefits that are funded by insurance.

The CHAIRMAN: I am not asking as to what you have already covered, I am asking the basis on which you extend it. It might not be a good argument to say we have already gone a certain distance, therefore we should go the rest of the way. I was trying to get some substantial argument on this question as to why you should go that far. I can foresee in this a situation where you might impoverish an estate.

Mr. LINTON: This would be property not passing through the hands of the executor, if it was payable direct to the wife, so the wife would be liable for the tax on it and the estate proper would in no way be affected, except for rates.

The CHAIRMAN: The estate would also be liable for the tax?

Mr. LINTON: No.

The CHAIRMAN: Where is that?

Mr. LINTON: That is in the payment section which provides in sections 13 and 14 that the executor as such is liable for all the tax on property passing through his hands, and the successor is liable for the tax on all property which does not pass through the executor's hands, and if this was payable to the wife that would certainly not pass through the executor's hands and liability would fall on her.

The CHAIRMAN: I am wondering how this is an estate tax at all, and why it is not something else. It is income in the hands of the widow received from a third person at arm's length. I am wondering on what basis it forms part of the estate to be taxed?

Senator LEONARD: It all goes back to the definition of property passing on death, which takes in all property that does not belong to the deceased at the time of death, such as, for example, gifts, which no longer belong to the estate and which nevertheless are taxed at the time of death.

The CHAIRMAN: Are there any other questions on this?

Senator CRERAR: Will this tax apply irrespective of the size of the estate or the value of the estate?

Mr. LINTON: Except that if the estate is not \$50,000 it will be free.

Senator CRERAR: It would be taxable if the estate is over \$50,000?

Mr. LINTON: That is right.

The CHAIRMAN: The rate that would be applied to the proceeds of this policy would be governed by the size of the estate?

Mr. LINTON: Yes.

The CHAIRMAN: Shall clause 1 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: On clause 2—Mr. Linton, what have you to say to this?

Mr. LINTON: This provides a different means of calculating the consideration obtained by a deceased person when he transfers property in consideration of an annuity. It puts the calculation on the basis of what he actually got back rather than what he hypothetically would have gotten back if you regarded the transaction as of the date it was made.

The CHAIRMAN: I will anticipate Senator Croll and ask you for an illustration.

Mr. LINTON: You could take as an example the transfer of \$100,000 by a man to his son in consideration of an annuity of \$10,000 payable back to him. Under the new and the old provision a return of 5 per cent is deemed not to be consideration. The amount in excess of 5 per cent is allowable. Under the old provision that excess over 5 per cent, in our example, \$5,000, would be taken at the value of an annuity to the deceased at the date of the transfer by actuarial tables.

Under the new provision the actual amount he got over and above 5 per cent during the time he lived—if he lived, say, ten years and was getting \$10,000 a year, the excess of 5 per cent would be \$5,000 and he would get \$50,000 and that would be deducted with interest at 5 per cent.

The CHAIRMAN: So that of that \$100,000 of assets transferred on that basis to provide the annuity the part of it that might be taxed, the difference, might be of the order of about \$30,000; that is, the difference between \$50,000 plus interest at 5 per cent subtracted from \$100,000.

Mr. LINTON: Yes.

The CHAIRMAN: Have I succeeded in confusing it, Senator Croll?

Senator CROLL: I understood what Mr. Linton said but you helped to confuse me, Mr. Chairman.

Senator LEONARD: Supposing he got back more than the original \$100,000?

Mr. LINTON: Nothing, then.

The CHAIRMAN: Shall subclause (1) of clause 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: What about subclause (2)?

Mr. LINTON: Subclause (2) removes from tax any amount falling to an estate by reason of the action of a non-lapse provision in such a thing as the Ontario Wills Act. Under the act as it stands, if a man dies leaving property to his son who has predeceased him, in Ontario the Wills Act presumes that the son has succeeded him and that the bequest will not lapse. In the son's estate, as the act stands, that amount is taxable as well as in the father's estate. This will act to remove it from tax in the son's estate.

Senator LEONARD: This was requested by the Canadian Bar Association, was it not?

Mr. LINTON: That is right.

Senator LEONARD: Have you been applying that in practice?

Mr. LINTON: Under the Succession Duty Act we had the practice of taxing these and we lost a case on it and, of course, under that act we ceased doing it once we lost the case. Under this act I do not know if any case has arisen, but this section is retroactive so that they would get the tax back.

The CHAIRMAN: Shall subclause (2) of clause 2 carry?

Hon. SENATORS: Carried.



The CHAIRMAN: Clause 3—debt or obligation created by statute.

Mr. LINTON: The Bar Association raised this question that possibly the wording of the act at the present time did not provide for the allowance as a deduction of an amount payable by the deceased under a statute as opposed to an amount payable as a debt for which he got consideration.

The CHAIRMAN: What would be an illustration of that?

Mr. LINTON: Outstanding income tax, I suppose. This makes clear that it is allowable. We have in practice always allowed this.

The CHAIRMAN: Shall clause 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 4.

Mr. LINTON: Clause 4 makes considerable changes to the charitable provisions. Are we to take them subclause by subclause?

The CHAIRMAN: Yes, please.

Mr. LINTON: Taking subclause (1), the first thing this does is to ensure that no provision to a charity will be deductible if it is not indefeasible. We had the wording in the original act that it had to be absolute and it turned out that "absolute" was perhaps not as thorough a word as we supposed it was, and so indefeasible is introduced as well.

The second thing this subclause does is to make clear that an organization such as the Foundation—which is in all other respects charitable but may not itself dispense charity inasmuch as it gives its money to other charitable organizations—will qualify for the deduction which it doubtfully did under the old provision.

The CHAIRMAN: Shall subclause (1) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subclause (2) of clause 4.

Mr. LINTON: Subclause (2) introduces a provision whereby if a provision to a charity is not indefeasible but becomes so within a year by the action of someone, either in appointing a charity or in renouncing their benefit,—if they do this and can do this—then the deduction will apply. It gives an area in which people who can render the charitable provision indefeasible can act to do so.

Senator LEONARD: Let me ask you about the case of a widow with an income for life with a power of encroachment and the gift of the residue to charity. What do you say as to that?

Mr. LINTON: We would say that is not an indefeasible provision and that the deduction would not operate, but if she renounced and could renounce her right to encroachment and did so within a year—

Senator LEONARD: To any encroachment whatsoever?

Mr. LINTON: Yes.

Senator LEONARD: In the past it has been a matter of whatever was the actual encroachment it was taxable as a gift to her but no further than that. Now are you making it so she must insist within one year whether she is to exercise any power of encroachment whatsoever?

Mr. LINTON: Under the Succession Duty Act the practice was as you have outlined. Under the Estate Tax Act today we would not have allowed a deduction if she renounced.

Senator LEONARD: What is the objection to the succession duty practice?

Mr. LINTON: The objection is that the estate would have to be kept open interminably, and one of the aims of the Estate Tax Act was to get quick and final settlement within a reasonable time as opposed to matters staying open



for thirty or forty years as they could under the Succession Duty Act, and if we are not to keep it open there is no knowing what the encroachment would be and, of course, it would be obviously open for any person to make such a provision and have the encroachment take place in full and yet get a charitable deduction.

Senator LEONARD: On the other hand, there are some very serious objections to this type of thing. Obviously it is going to change the provisions that have been made for the widow and for the charities. There are a good many wills of this type. This will apply to a great cases. It would seem to me that unless you had run into in practice instances of where the keeping of the estate open caused you to lose tax—our own experience has been that all those were reported and tax paid on them—this seems to be going pretty far in upsetting quite a number of situations and making it more difficult to make provisions such as have been made in the past.

Mr. LINTON: That is true. On the other hand, if we are to have an act which will keep open for the length of time encroachment can take place, then such matters as the making of a reassessment within four years would have to be removed or altered.

Senator LEONARD: Well, I wish you could find some other way of doing it, that is all. I suppose it would mean re-drafting a number of wills?

Mr. LINTON: Oh, yes, it must.

The CHAIRMAN: Shall subclause 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subclause 3?

Mr. LINTON: Subclause 3 simply gives effective dates to these provisions and insures that this one year right will extend long enough in the matter of estates which have already come to assessment.

Senator LEONARD: May I come back to the point I was making, because Senator McKeen has raised the question here. What about extending that one year, and then to four years?

Mr. LINTON: Well, that would be a matter of policy.

The CHAIRMAN: No administrative difficulty, is there?

Mr. LINTON: Well, the longer the time is extended the longer the time elapses before you can assess an estate where these conditions exist.

Senator LEONARD: You will get the tax on any encroachment in those four years.

Mr. LINTON: Well, you would have to change the provision then. Renunciation presumably is a renunciation completely, if you could take the money for a few years and give it up, which I guess you contemplate, that would require a wholly different provision; it could be done.

Senator LEONARD: It could be done and would probably result in more taxes in point of fact.

Mr. LINTON: It might.

Senator LEONARD: Because one could probably renounce in the first year under this and therefore draw nothing, but if it was two years, three years, or a maximum of four years, then there would be some encroachments upon which tax would be forthcoming.

Mr. LINTON: But that would mean that such estates would have to be kept open four years always, and executors would not be able to achieve finality in all that time.

Senator LEONARD: You might give more thought to that, whether the one year could be extended. In some cases I think it would be taken care of.

—Subclause 3 carried.

The CHAIRMAN: Section 5?

Mr. LINTON: Section 5 was introduced at the instance of the Bar Association simply to make clear that estates under \$50,000 were not taxable. They never were, but it took a rather careful reading of the provision to make that plain.

Senator ASELTINE: It is for clarification?

The CHAIRMAN: Yes.

Section 6—Situs of property.

Mr. LINTON: This introduces two new situs rules, one clarifying and the other additional. The clarifying one is simply to ensure that the present rule for transfer places of stock takes account only of the transfer places available to the stock we are dealing with, and not other issues of the company or other holdings which have a different set of transfer agencies available. That is in subclause 2.

Senator LEONARD: That really is only important in so far as provincial allowances are concerned?

Mr. LINTON: Yes, provincial credits and provincial distribution in tax-sharing arrangements.

Subclause 1 is simply changing lettering to give effect to the subclauses following.

Subclause 3 provides a rule that where the situs cannot be determined by any of the other rules it will be taken to be the domicile of the deceased. Several kinds of property have come to our attention where you cannot tell what the situs is. Cash gifts and voluntary death benefits, would be examples.

The CHAIRMAN: What about the question I raised the other day of the effect of adding (e) to subclause 6 on the question of tax credit so far as situs of patents and trademarks are concerned?

Mr. LINTON: Well, we have very little occasion to come upon patents and trademarks. These seem very seldom to form the subject matter of estates for some reason. It is true of those as well as of other things that this rule might result in a different situs than the common law would ascribe to the asset and might give rise to a credit or take away a credit by the difference.

The CHAIRMAN: Yes, it could easily do that.

Mr. LINTON: Yes.

The CHAIRMAN: Was there any reason why the rules as to situs in relation to copyrights and trademarks and patents were not brought into the tax credit section?

Mr. LINTON: One of the reasons was that the rule in section 38 depends on where patents were registered, and all we are interested in there is in bringing them into Canada. It would seem wrong for interprovincial purposes to introduce a rule that would always put patents in Ontario since they are all registered here.

Senator CROLL: Why?

Mr. LINTON: Well, to put an artificial rule of situs in that would always work to have Ottawa the situs did not seem a good artificial rule to introduce.

Senator CROLL: It all depends where you are sitting.

Senator LEONARD: The real effect is to cause some disallowance of provincial tax payments.

Mr. LINTON: Well, of course, the credit no longer depends at all upon whether a provincial tax has been paid. The credit arises on the situs of the property. Now, this will, of course, in some cases put the situs in a different place from what it would be for provincial purposes, and some people will pay provincial tax and get no credit from us, and perhaps other people will pay no provincial tax and get a credit from us, and this results in some measure from the operation of several of the rules.

The CHAIRMAN: If you have the situation where the patent is being exploited in Alberta or Saskatchewan and the owner of the patent dies in Ontario, now he will be taxed in Ontario?

Mr. LINTON: I suppose so, because I suppose the thing will have the situs in Ontario. I am not too sure of the common law rule of situs on patents. Perhaps Mr. De Wolf could say something on that.

Mr. DE WOLF: I think as the amendment stands, it would be Ontario. Otherwise it has a situs where it is registered.

Mr. LINTON: That would be Ontario, too, in this case.

Mr. DE WOLF: That would be Ontario also.

Senator CROLL: So we see an example of liability in two instances.

Mr. LINTON: I suppose if someone in Manitoba had a patent and he was domiciled in Manitoba, if the common law situs of the patent is in Ontario, as Mr. De Wolf suggests, then Ontario would tax and our rule would put the situs in Manitoba and he would not get a credit.

Senator CROLL: Well, does that strike you as fair?

Mr. LINTON: No, not in itself; but several of these rules which are introduced for the sake of simplicity and clarity do lead to these occasional results where someone, by a test of whether he pays provincial tax or not, might think he was entitled to a credit and does not get it, or might think he was not and does. Any time you have a variance from the common law rules you will occasionally get divergences, and we get them in other of the rules much more often than in this.

Mr. SMITH: I think I might add to this by saying you have to look at the system as a whole and as a part of the tax sharing arrangements. You have a system of payments to provinces based on an allocation of tax. It would not be fair to the federal revenue to give a tax credit in Ontario and also to pay Manitoba tax rental payment.

The CHAIRMAN: But is not the problem more basic than that? Why do we need this subparagraph (e)?

Mr. LINTON: The reason we feel we need it is that in many types of properties that will fall under it there is no way of determining the situs at all. There is a way with respect to the patents you were discussing, but in most of the property that will fall under (e) there is no way of telling because the thing does not have any clearly establishable situs.

The CHAIRMAN: The point is that at any time a person gets in to an argument about where the situs is you can say that the mere fact there is an argument shows there is a doubt, and you can say it is where the man died.

Mr. LINTON: I think we would have a difficult time doing that if it could be shown that it was covered by another section. If we tried that I am sure we would be subject to attack if it could be shown that it did fall under another rule.

The CHAIRMAN: Let us take this act as it presently exists. Subparagraph (e) is not in the act. Let us also take a patent situation. There is no provision in your tax credit situation for determining the situs of a patent. If you were faced with that situation under the present act how would you deal with it?

Mr. LINTON: We would have to try to decide what the common law situs of the patent is.

The CHAIRMAN: And that could be where the patent is exploited?

Mr. LINTON: I am not familiar with what the common law situs is.

Senator HUGESSEN: It might be exploited in several provinces.

Mr. LINTON: Yes. If that is the rule then we would not like to have to be bound by that rule because it would be too hard to determine.



Mr. DE WOLF: The rule we have for foreign estates was taken from what was regarded to be the common law rule which is to be found in one of the English text books. I think it was said to be that without legal authority in the sense of there not being any case backing it up, but that is what has always been accepted in England as being the common law rule.

The CHAIRMAN: Shall this subclause carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subclause 4 simply deals with the coming into force. Does that carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 7?

Mr. LINTON: Clause 7 follows an amendment which is being introduced into the Income Tax Act, and it provides that the four-year bar on re-opening assessments can be waived by the representative of an estate if he wishes to.

The CHAIRMAN: Yes, I am glad to see that being done. I have always thought there should be a right in a person to waive an immunity that he enjoys, and that is the effect of this.

Mr. LINTON: Yes.

Senator HUGESSEN: It is purely optional.

The CHAIRMAN: Yes, it is in the hands of the taxpayer.

Mr. LINTON: That is right.

The CHAIRMAN: Shall clause 7 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 8?

Mr. LINTON: This provides some measure of relief in situations where an asset has been calculated having regard to a prescribed interest standard or a prescribed mortality standard, and then within four years something happens to change the basis of the calculation. This does something to relieve a situation which this committee was concerned with when the present act was dealt with as a bill.

The CHAIRMAN: Can you proceed under this clause if as and when it becomes law even if the estate has been closed out?

Mr. LINTON: Yes, if it is within the time limit.

The CHAIRMAN: Shall clause 8 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: That is as to subclause (1). Subclause (2) is as to the time of coming into force. Shall it carry also?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 9?

Mr. LINTON: This is pretty technical. It provides that a re-assessment is not invalid by reason of not having been made by the date of the mailing of the notice.

The CHAIRMAN: I suppose the situation there is that if I were objecting to an assessment and I filed my notice very close to the end of the four-year period so that the minister could not get his answer in until after the expiration of the four-year period, he is not precluded from making an answer to my notice of objection, and he could, as a part of that answer, make a re-assessment?

Mr. LINTON: Yes.

The CHAIRMAN: That seems clear. Shall clause 9 carry?

Hon. SENATORS: Carried.



The CHAIRMAN: Clause 10?

Mr. LINTON: Clause 10 makes a small modification in the situs rule for moneys deposited with an insurance company. The act mentions moneys deposited by a deceased with an insurance company, and this new clause includes moneys deposited to the credit of the deceased although not having been put there by him.

The CHAIRMAN: Does the introduction of these few words change any incidence of taxation?

Mr. LINTON: I suppose it might because if money were at present deposited to his credit by somebody else then the present rule with respect to situs of domicile would not apply. The situs would then be, by the common law rule—well, it might certainly differ from his domicile. Whether it would be determined by the rule relating to deposits or the rule relating to insurance might become a nice technicality depending on whether the deposit was governed by the policy itself or by some subsequent contract.

The CHAIRMAN: This is certainly making administration easier.

Mr. LINTON: Yes.

The CHAIRMAN: Would you say it is likely to increase in any material way any question of tax?

Mr. LINTON: No, I would not think it would because it would place all these things at the domicile of the deceased, and all of these being foreign decedents the deposit would become free of tax whereas in some cases now they would be taxable.

Senator HUGESSEN: It gives a situs.

Mr. LINTON: To non-domiciled people.

Senator HUGESSEN: It only gives the situs?

Mr. LINTON: Yes, the situs of interests of non-domiciled persons.

The CHAIRMAN: Does clause 10 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 11?

Mr. LINTON: Clause 11 reduces the requirement on the minister in the present act to sell property seized within ten days. It can now be held and may be sold later unless otherwise ordered by the minister. It relieves the strength of the present sale provision.

The CHAIRMAN: I suppose it means he shall try to sell it?

Mr. LINTON: Yes.

The CHAIRMAN: Shall clause 11 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 12?

Mr. LINTON: Clause 12 changes the consent provisions in a number of ways. The principal one of them is to introduce the requiring of the consent by a third person who has in his custody certain property to be paid out in which the deceased, prior to his death, did not have a beneficial interest. Voluntary death benefits would be a good example of that. It also changes wordings here and there at the instance of the insurance companies to make the rules that did exist more clearly applicable to some minor groups of policies such as third party insurance a deceased might have owned, or annuities that were payable by reason of his death but which he may not have provided. The insurance companies have made a good point, that they cannot always tell who provides the annuity.

The CHAIRMAN: That is subclause (1).

Mr. LINTON: Yes. Subclause 2 changes the provisions as to the amounts that are payable without the consent of the minister, to agree with these various points introduced in the requirements provision in (1).

The CHAIRMAN: I notice by clause 12 (2) you create an offence. What is the difference there?

Mr. LINTON: That is subclause (3). The changes in that subclause are only technical to make them agree with the wording now introduced in section 47(1).

The CHAIRMAN: You say "every corporation", whereas you previously had an enumeration.

Mr. LINTON: Yes. Previously it was "every bank, trust company, insurance company..." and so on.

Senator LEONARD: We have not dealt with subclause (2).

Mr. LINTON: Subclause (2) introduces a provision whereby amounts of insurance up to \$900 can be paid without notice to the minister. It eliminates paper work on both sides in insignificant amounts.

Senator LEONARD: No matter what the amount of the policy, a payment up to \$900 can be made immediately.

Mr. LINTON: Yes.

The CHAIRMAN: On a \$5,000 policy you can pay \$900 right away.

Mr. LINTON: That is right.

The CHAIRMAN: We have now covered all the subclauses in clause 12. Shall clause 12 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 13?

Mr. LINTON: Clause 13 is introduced to relieve the Canada Council from any possibility of not being treated as a charity. Under the Canada Council Act there is a provision that bequests to it will not be taxable for succession duties. Now that the Estates Tax Act has replaced the Succession Duty Act this has to be changed, and it is changed here instead of changing the Canada Council Act.

The CHAIRMAN: Shall this clause carry?

Hon. SENATORS: Carried.

The CHAIRMAN: We have dealt with all the clauses now. Shall I report the bill without any amendment?

Mr. LINTON: Excuse me. I made a mistake with respect to the \$900. This applies only if the total amount of the policy does not exceed \$900. Someone suggested there could be a payment of \$900 on a \$5,000 policy—that is not so.

Senator LEONARD: It is only where the total amount of the policy is \$900 or less.

Mr. LINTON: Yes, \$900 or less. It eliminates any restriction on industrial policies in small amounts, or accident insurance or sickness benefits.

Senator LEONARD: As to any policy in excess of \$900, the former rule still applies?

Mr. LINTON: Yes.

Senator LEONARD: Payment with notice.

Mr. LINTON: Yes.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

—The bill was reported without amendment.



Third Session—Twenty-fourth Parliament  
1960

# THE SENATE OF CANADA

## PROCEEDINGS

OF THE  
STANDING COMMITTEE  
ON

# BANKING AND COMMERCE

To whom was referred the Bill C-68, An Act to amend the  
Income Tax Act.

---

The Honourable **SALTER A. HAYDEN**, *Chairman*

---

THURSDAY, JUNE 30, 1960

No. 1

---

### WITNESSES:

Mr. E. R. Irwin, Director, Taxation Division, Department of Finance;  
Mr. J. F. Harmer, Assistant Director, Assessment Branch, Mr. D. R.  
Pook, Chief Technical Officer and Mr. E. S. MacLatchy, Assistant  
Director, Legal Division, of the Department of National Revenue.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1960

THE STANDING COMMITTEE ON  
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Gershaw	Paterson
Baird	Golding	Pouliot
Beaubien	Gouin	Power
Bois	Haig	Pratt
Bouffard	Hardy	Quinn
Brunt	Hayden	Reid
Burchill	Horner	Robertson
Campbell	Howard	Roebuck
Connolly	Hugessen	Taylor
(Ottawa West)	Isnor	(Norfolk)
Crerar	Kinley	Thorvaldson
Croll	Lambert	Turgeon
Davies	Leonard	Vaillancourt
Dessureault	*Macdonald	Vien
Emerson	McDonald	Wall
Euler	McKeen	White
Farquhar	McLean	Wilson
Farris	Monette	Woodrow—50.

---

\**Ex officio member.*

(Quorum 9)



## ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate.

WEDNESDAY, June 29, 1960.

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Pearson, for second reading of the Bill C-68, intituled: "An Act to amend the Income Tax Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Buchanan, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,  
*Clerk of the Senate.*



## MINUTES OF PROCEEDINGS

THURSDAY, June 30, 1960.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

*Present:* The Honourable Senators: Hayden, *Chairman*; Aseltine, Beaubien, Brunt, Croll, Dessureault, Euler, Gershaw, Golding, Haig, Lambert, Leonard, Macdonald, McKeen, Pratt, Thorvaldson, Turgeon, Vaillancourt, Wall and Woodrow—20.

*In attendance:* Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-68, An Act to amend the Income Tax Act, was read and considered.

Mr. E. R. Irwin, Director, Taxation Division, Department of Finance, Mr. J. F. Harmer, Assistant Director, Assessment Branch, Mr. D. R. Pook, Chief Technical Officer and Mr. E. S. MacLachy, Assistant Director, Legal Division, of the Department of National Revenue, were heard in explanation of the Bill.

On motion of the Honourable Senator Brunt, seconded by the Honourable Senator Turgeon, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bill.

Clauses 1 to 17 were carried.

Subclauses 2, 3 and 4 of clause 18 were carried.

Clauses 19 to 32 were carried.

Subclauses 1 to 4 and 6 of clause 33 were carried.

At 1.15 p.m. further consideration of the Bill was adjourned until 10.00 a.m., Wednesday, July 6th, 1960.

Attest.

A. Fortier,  
*Clerk of the Committee.*





## THE SENATE

### STANDING COMMITTEE ON BANKING AND COMMERCE

#### EVIDENCE

OTTAWA, Thursday, June 30, 1960.

The Standing Committee on Banking and Commerce, to which was referred Bill C-68, an Act to amend the Income Tax Act, met this day at 10 a.m.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Gentlemen, we have a quorum. We have one bill before us this morning, C-68, an Act to amend the Income Tax Act. As witnesses we have Mr. F. R. Irwin, Director, Taxation Division, Department of Finance; Mr. J. F. Harmer, Assistant Director, Assessment Branch, Department of National Revenue; Mr. D. R. Pook, Chief Technical Officer, Department of National Revenue, and Mr. E. S. MacLatchy, Assistant Director, Legal Division, Department of National Revenue.

Since it is impossible to look through the whole bill and find a principle that is running through it except the principle of levying taxes, and there is no use discussing that so I would suggest we deal with the bill clause by clause.

Hon. SENATORS: Agreed.

The CHAIRMAN: These four representatives I named will sort out among themselves who is going to give the answer on the particular clauses as we go along. If you have any questions, you just ask them and somehow we will get the answer for you.

Clause 1—Estate Tax and Succession Duties applicable to certain property.

This deals with the question we discussed yesterday about getting a credit on annual payments under a pension instead of some element of estate tax and succession duty that may have been included in the valuation of the benefit originally. Would you care to give an explanation in as few or as many words as you would like, Mr. Irwin, if you are the one who is going to do it?

Mr. IRWIN: Mr. Chairman, this amendment provides that a taxpayer who receives a pension, a death benefit or an annuity under a registered retirement savings plan may deduct a certain portion thereof for income tax purposes on account of the estate tax or succession duty that may have been paid on the value of that particular property.

The method outlined in the amendment is first to determine the estate tax applicable to the property and the succession duty, if any, that may reasonably be attributed to the property. You calculate the percentage which the aggregate of these taxes is of the property.

The CHAIRMAN: The value of the property.

Mr. IRWIN: Is of the value of the property. This percentage is the amount that may be deducted from income for income tax purposes.

The CHAIRMAN: In each year.

Mr. IRWIN: It may, of course, be a single payment.

The CHAIRMAN: Yes.

SENATOR BRUNT: Give us an example of that.

Mr. IRWIN: A simple example would be where there was an estate, say, of \$100,000 of which 50 per cent was comprised of the present value of a pension continuing to a widow. The Estate Tax Act in section 58(4) defines the part of any tax payable under that act that is applicable to property passing on death.

Senator BRUNT: Just let us take arbitrary figures and apply them to the example. I think that is the easiest way.

The CHAIRMAN: What amount of estate tax would you apply there?

Mr. IRWIN: You might say the estate tax was \$6,000. We would look first to section 58(4) of the Estate Tax Act and determine the amount of the estate tax that is applicable to the pension. That would be \$6,000 over the aggregate net value of the property.

Senator BRUNT: No, we have a succession duty in here.

The CHAIRMAN: Let us assume it is Ontario.

Mr. IRWIN: All right. Suppose there is also a succession duty of \$1,000 for a total of \$7,000. You take the aggregate of the taxes applicable to the property, which I suggested was \$100,000, to give a rate of 7 per cent.

The CHAIRMAN: No. Wait a minute. It is the \$7,000 over the value of the benefit; so it would be \$7,000 over fifty, wouldn't it? You are only ascribing 50 per cent of this estate as being the value of the pension benefit.

Mr. IRWIN: I must refer you back to the words under (A). You determine first the estate tax that is applicable to the property and the succession duty that is applicable to the property and take the aggregate of this over the property.

The CHAIRMAN: Over the value of the property. You put a value of \$50,000 on that.

Mr. IRWIN: If you assume that the taxes applicable to the pension are \$7,000, yes.

The CHAIRMAN: It would be seven-fiftieths of whatever the annual payment is. Let us assume there is an annual payment of, say, \$2,500.

Senator BRUNT: Make it \$2,800.

The CHAIRMAN: All right, a \$2,800 annual payment. So it would be seven-fiftieths of \$2,800.

Mr. IRWIN: The \$7,000 is the total of the estate tax and the succession duty applicable to this property?

The CHAIRMAN: Yes.

Senator BRUNT: And you put that over fifty.

Mr. IRWIN: Over the value of the property to arrive at a percentage and that is the percentage which may be deducted from the annual payment or the benefit if it happens to be a single payment.

Senator BRUNT: Let us get it clear. The \$7,000 is put over \$50,000?

The CHAIRMAN: That's right, over the value of the benefit.

Senator BRUNT: Is that right, Mr. Irwin?

Mr. IRWIN: Yes.

The CHAIRMAN: That is what the statute says. On the example we have it would work out that slightly under \$400 would be deducted from what would otherwise be paid with respect to the annual payment if we assume the annual payment to be \$2,800. It would be seven-fiftieths of that. It would be slightly under \$400.

Senator BRUNT: It would give you \$392 on which no income tax would be paid.

The CHAIRMAN: Instead of returning \$2,800 you would return \$2,800 less \$392 as income for that year. That is correct, is it not, Mr. Irwin?

Mr. IRWIN: Yes, sir.

The CHAIRMAN: And if there was a lump sum payment you would, of course, just apply the fraction in the lump sum.

Mr. IRWIN: Yes.

The CHAIRMAN: This goes part way in meeting the situation we tried to deal with two years ago, as you will recall, Mr. Irwin, in an amendment to the Estate Tax Act which was before us at that time. I say part way because by the time this clause which we are now dealing with starts to operate the estate would have already paid estate tax and succession duty on the value of the benefit, which valuation included the income tax element in the benefit. Is that not right?

Mr. IRWIN: Yes.

The CHAIRMAN: So it has not resolved the problem but possibly we are making progress.

Mr. IRWIN: There are two ways, of course, this can be handled, the estate tax approach or the income tax approach. The Government, after a good deal of study on this matter, decided upon the income tax approach.

The CHAIRMAN: Yes, and it is part of our responsibility if we think it does not go far enough to comment on the distance it goes and to point out that the road is still open ahead for further improvement.

Senator MACDONALD: It will affect just the income for 1960 and the future?

The CHAIRMAN: Yes, in subclause (2) of clause 1 it is provided that it applies to 1960. Subclause (2) says:

(2) This section is applicable to the 1960 and subsequent taxation years in the case of any benefit received upon or after the death of a predecessor whose death occurred after 1958.

The CHAIRMAN: What was the date of the coming into force of the Estate Tax Act?

Senator ASELTINE: January 1, 1959.

The CHAIRMAN: January 1, 1959. So it only deals with any benefits that have accrued since the coming into force of the Estate Tax Act, but not retroactively. The first time it will be reflected will be in 1960. There will not be any benefit in 1959 if there was a payment. That is right.

Is this section clear now? Shall we carry it?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 2, Mr. Irwin?

Mr. IRWIN: Clause 2 is to prevent the taxpayer having the benefit of both section 15 and section 37. Both these sections deal with what a taxpayer, who is a member of a partnership or a proprietor of a business, may do in certain circumstances where he may find that more than twelve months income is bunched into one income tax return.

The CHAIRMAN: Have you an illustration of that? I have been studying both those sections, and I must say I was not too clear as to what the result was.

Mr. IRWIN: Section 15 of the Income Tax Act requires that an individual who is a member of a partnership must include in his income for a calendar year the income of the partnership earned during the fiscal period that ended in the calendar year. Suppose an individual is a member of a partnership whose fiscal period ends on, say, January 31, 1960, for 1960 he must



include in income the income of that fiscal period that ends in the calendar year. Now, it might happen that the partnership was wound up on say July 31, and that would mean the fiscal period of the partnership will end on July 31 and he would have two fiscal periods ending in 1960 and would have to include 18 months income in his return for 1960. This would happen if it were not for the provisions of section 15 which permit him to elect to have the fiscal period end at the time it would have ended had the partnership not been wound up.

Senator BRUNT: He puts nine months into the next year?

The CHAIRMAN: No, the whole thing after January 31.

Mr. IRWIN: If he makes that election.

Senator BRUNT: It goes into the subsequent year?

The CHAIRMAN: That is right.

Mr. IRWIN: All clause 2 says is that he may not use section 15 if in the year the partnership is wound up he can use section 37 which gives him certain other reliefs, which we will come to later in this bill because that section is being amended as well.

The CHAIRMAN: Let us now bring in section 37, subsection (2) which appears on page 7 of the bill.

Mr. IRWIN: Section 37 of the Income Tax Act is designed to deal with situations where the taxpayer might have to include more than twelve months income in one taxation year. This could arise, for example, where a proprietor of a business sells his business and thereby ends its fiscal period and then takes employment. He might have income in the year both from the fiscal period of his business that ended in the calendar year and then from the employment for the remainder of the year. Section 37 permits a proration of the income so that that part of his income which is attributable or which might be attributed to more than is activities during the year is taxed at an average effective rate. It is designed to alleviate the impact of our graduated rate schedule on income being bunched into one year. Clause 10, subclause (2), provided by this bill, extends this relieving provision to cover a number of other situations where more than twelve months income may be bunched into one year. For example, when a taxpayer withdraws from a partnership and becomes a proprietor of a business.

The CHAIRMAN: Let us assume he withdraws from a partnership on March 1 and he becomes a proprietor of another business in April. What is there there by the time he reaches the end of the year against which he would require relief?

Mr. HARMER: The only case in which he would require relief there, Mr. Chairman, is if the proprietorship on which he embarked in April had a fiscal period ending before the end of that calendar year.

The CHAIRMAN: He would start off with this condition, that you are going to have a fiscal period of several operations ending in the same year?

Mr. HARMER: That is right.

The CHAIRMAN: That is the basis for it, and then this section would come into operation and relieve on some apportionment or some prorating basis, is that right?

Mr. HARMER: That is right.

Senator BRUNT: A partnership or a proprietorship might have a fiscal year that coincided with the calendar year.

The CHAIRMAN: Of course, if you did that then your first year of the proprietorship would be less than twelve months and the combination of your



operation in a partnership and in a proprietorship in all would only encompass twelve months, so there would not be any case for relief under this section, would there?

Mr. IRWIN: Not in the example you have outlined.

The CHAIRMAN: Any other questions on this?

Senator BRUNT: No.

The CHAIRMAN: Shall section 10 carry as well as section 2?

Some HON. SENATORS: Carried.

The CHAIRMAN: Section 3 is another one of the depreciation sections. I think it is quite straightforward reading, Mr. Irwin, but would you give an explanation of it?

Mr. IRWIN: Subclause (2) deals with the transfer of depreciable property from one prescribed class to another. The regulations prescribed under the authority of the Income Tax Act provide for dividing assets into about eighteen classes with a rate of capital cost allowance for each class. It sometimes happens that a taxpayer thinks an asset falls under one class, when, in fact, it should fall under another class, and when this is discovered he wants to make a change; or the Minister of National Revenue may, on examining a return, find that a taxpayer has regarded an asset as falling in the wrong class and may direct him to reclassify it. This clause provides rules to take care of these circumstances.

The CHAIRMAN: Yes, for whatever the reason for the change in classification. It may be at the request of the minister, or it may be that the taxpayer himself has misclassified the property and wants to shift it another class; is that right?

Mr. IRWIN: Or the classification of assets may be changed by regulation.

The CHAIRMAN: So in all those events you have taken care of it by this amendment. I assume in practice you were doing it, anyway.

Mr. HARMER: Yes.

The CHAIRMAN: Yes, this is just giving statutory effect to something that was good and workable in practice. Does subsection (1) of section 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subsection (2) of section 3 deals with the situation in a bankrupt estate.

Mr. IRWIN: Not a bankrupt estate but a bankrupt corporation. It provides that a trustee in bankruptcy may claim a capital cost allowance on an amount equal to the undepreciated capital cost of the assets of the bankrupt corporation at the time immediately before the corporation became bankrupt.

The CHAIRMAN: Does subsection (2) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subsection (3) on page 4 deals with the time of coming into force of these subsections that you have explained?

Mr. IRWIN: Yes, sir.

The CHAIRMAN: Does subsection 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 4?

Mr. IRWIN: Section 4 deals with family assistance payments. New Canadians receive family assistance payments in respect of their children for the first year in Canada. This is the period, you will recall, during which they do not receive family allowance payments. This amendment provides that children in respect of whom family assistance is paid shall be classed for

income tax purposes as if they are children eligible for family allowances, and the deduction that may be claimed for them will be \$250 instead of \$500.

Senator THORVALDSON: Mr. Irwin, is there no way in which this legislation can be made permanent? This section is in the amending act every year. Is there no way in which you can legislate once and for all in regard to this subject-matter?

Mr. IRWIN: This has to be annual legislation because the payment to the children of new Canadians is authorized by the annual Appropriation Act. It is under the estimates of the Department of Citizenship and Immigration. Now, it would be possible for this to be made permanent by amending the Family Allowances Act or by some other act of Parliament providing for these family assistance payments, but Parliament has not done so.

Senator BRUNT: In other words, if they do not set up an appropriation in any year you would not have this in?

Mr. IRWIN: That is so.

The CHAIRMAN: Does section 4 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 5 deals with the increase in the deduction of medical expenses.

Senator ASELTINE: I think that is quite clear.

The CHAIRMAN: Yes. I think so. Does section 5 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 6, Mr. Irwin?

Mr. IRWIN: Section 6 deals with the calculation of the income of a non-resident, and subclause (1) is intended to make it clear that the income of a non-resident from employment in Canada or a business carried on in Canada shall be computed by reference only to his income from Canada.

The CHAIRMAN: Is there any difference, Mr. Irwin, between the new language which appears in section 6 as to meaning, and the language which is presently in the statute?

Mr. IRWIN: There was intended to be, sir.

Senator BRUNT: Would you explain what it is?

Mr. IRWIN: The words that are now to be used, I think, must be examined in the light of the new wording found in clause 33 where income from a source or a particular place is defined. The objective here is to make sure that in computing the income of a non-resident we shall look only to his income from a source or from a particular activity.

The CHAIRMAN: But when you talk about a part of a man's income which may be reasonably attributed to duties performed by him in Canada or to a business carried on by him in Canada, and you say his income from all duties performed by him in Canada and all businesses carried on by him in Canada—if you put those two sentences down and write your answer at the end of each as being so much the answers would be the same to each line, would they not?

Mr. HARMER: Can I try to explain that, Mr. Chairman?

The CHAIRMAN: Certainly.

Mr. HARMER: I think the difference occurs where there may be a loss from one source, and income from the other. Under the old wording of section 31 it could be that the man ended up with an income from one source of \$10,000, and a loss of \$10,000 from another source, so that he had no income. Therefore, you cannot apportion anything between the two

countries, whereas under the new wording of section 31 the intention is to look at the income from the source in the particular country which may end up with us being able to tax \$10,000 in Canada and saying the whole \$10,000 loss was from the United States where, in fact, it occurred.

The CHAIRMAN: That is not the question I am asking. Yes, I am beginning to—

Mr. HARMER: The old section 31 said "such part of his income", and if he had no income there would be no part of it allocatable to Canada.

The CHAIRMAN: Suppose you have a resident carrying on, say, two proprietorships in Canada so that he personally is liable for tax. He has a profit from one and a loss from the other. What you are saying is that by this change in the wording in section 6 of the bill, plus the change in the definition in section 33 of the bill, you might be able to attribute the loss of some business operations of his to the States so that it would not be brought into Canadian calculations at all? Is that what you say?

Mr. HARMER: No, I did not intend to say that, sir. What I meant was that he might have two businesses, one of them being, in fact, in the United States and one, in fact, being in Canada; and, in fact, in the United States he lost money, and, in fact, in Canada he made money. Under the old law his income from all sources is the net of those two amounts, and if it comes to nil or less than nil there would be nothing to allocate to Canada notwithstanding the fact that he had, in fact, made money from his Canadian business.

The CHAIRMAN: Wait a minute, now. This section that you are proposing to amend deals with the taxable income of non-residents.

Mr. HARMER: In Canada.

The CHAIRMAN: Yes.

Mr. HARMER: Nevertheless, a non-resident is the same as any other person. His income has to be calculated as being from all sources, and this is the section which says how much of that income from all sources Canada can tax.

The CHAIRMAN: Well, Mr. Harmer, with respect to a non-resident of Canada who is carrying on a business in Canada and who is also carrying on a business in the United States, are you suggesting that he could attempt to relate his business operations and losses in the States to his operation in Canada?

Mr. HARMER: In practice, sir, I do not think this is happening, but in law we were afraid that someone could raise this argument, and the purpose of this amendment is to prevent him from so doing.

The CHAIRMAN: He might have an operation in Canada and an operation of the same kind of business in the United States. Then, to the extent that one impinged on the other in the sense of head office expenses, and so on, wherever the head office was, you are then concerned with the Canada-United States convention, are you not?

Mr. HARMER: Yes.

The CHAIRMAN: I am entitled to bring it into expenses. Are you sure there isn't something more we are missing, Mr. Irwin?

Senator BRUNT: You are very suspicious.

The CHAIRMAN: Yes. That seems so simple that it is hardly worth while covering by the change.

Senator MACDONALD: I think the witness' remark that it has no such intention, should be recorded.

Senator THORVALDSON: Has anyone challenged the previous section?

Mr. HARMER: Only indirectly because of this International Pipeline case. This arises out of that case. The Justice Department in studying it thought



that, although it was not dealing with section 31, the reasons were equally applicable in the case of a non-resident earning income in Canada, and felt that if we were going to have to fix up the Income Tax Act to overcome that decision, it would have to be done in respect of that income.

The CHAIRMAN: But it was not a question of determining taxable income of a non-resident.

Mr. HARMER: No.

The CHAIRMAN: You were determining the taxable income of a resident.

Mr. HARMER: Yes. But Justice felt it would be equally applicable in the case of a non-resident.

The CHAIRMAN: We have had this provision—section 6 refers to subsection 1 (a) of section 31 of the act—in the statute for a few years.

Mr. IRWIN: Yes.

The CHAIRMAN: Has there been any difficulty in administering it?

Mr. HARMER: Not that I know of.

The CHAIRMAN: Has any question been raised by anyone of the possibility that you will have the difficulties you envisage, and which you give as the reason for the change?

Mr. HARMER: Not in an actual case, no.

Senator THORVALDSON: I must say, Mr. Chairman, I rather prefer the language of the amendment. I think it is more concise.

The CHAIRMAN: It might be. If I had seen that language before it was put in the bill, I would have preferred it, but I do not like changing to language one is not accustomed to, unless there is a reason for the change.

Senator THORVALDSON: I agree. However, I think this language is more clear-cut than the old section.

The CHAIRMAN: I don't wish to be wearisome, but could we get a short statement on the record as to what this amendment does and what situation it covers that the present language does not cover?

Senator BRUNT: This will be very hypothetical.

The CHAIRMAN: It has got to be, because they tell us they have never had a case in practice.

Mr. IRWIN: Mr. Chairman, I know you would not want us to undertake to defend legislation. Our role of course is to try to explain it.

The CHAIRMAN: I did not ask you to defend it; I just ask you to explain it.

Mr. IRWIN: This is a case, I think, where we hope to amend the law before difficulties arise, not afterwards.

The CHAIRMAN: You tell me what is the difficulty that you perceive so clearly ahead that you think you should amend before it happens.

Senator BRUNT: Could you give us an example of where you might benefit by it?

Mr. IRWIN: I don't think I can add anything to what Mr. Harmer has said.

The CHAIRMAN: It seems to me Mr. Harmer's is a reverse case.

Mr. HARMER: Mr. Chairman, the explanatory notes on subclauses 1 and 2 refer to the same kind of case that I was stating as an example. It says that the amendments provide that the income of a non-resident from employment in Canada or a business carried on in Canada shall be computed by reference only to income from Canada not by reference to the world income of the non-resident.

In my example the world income would have been nil.

Senator McKEEN: Are there cases now where foreign companies are using profits they make in Canada as an offset against losses in a foreign country?



Mr. HARMER: Not to my knowledge, senator.

Senator McKEEN: Would you allow it?

Mr. HARMER: No. But we were afraid if we had disallowed that, and were taken to court, under the present wording of the law it could very well be that we would lose the case.

The CHAIRMAN: You have authority over expenses that may be the subject matter of deductions against earnings, and you may disallow any part of expenses which you think are not properly referable to the earning of that income, or that are in excess of what is reasonable. Is that not correct?

Mr. HARMER: Yes sir. But these are not expenses in the normal sense; they are losses from another business.

Senator CROLL: Is not the important word here "all"? They are inserting the words "from all" and "and all businesses". That seems to me to be stating it more firmly.

The CHAIRMAN: I don't see, Senator Croll, any difference between saying "from all duties performed by him", and "may reasonably be attributed to duties performed by him".

Senator CROLL: What appeals to me is the word "all"; that seems a more inclusive word than the words used in the present section. It made a difference to me when I read it, but I waited to hear what others had to say. As I say, I thought this was a firmer way of putting it, and much more conclusive. Since they are trying to attain the same objective, it seems to me that we ought to give them the words if they think they will do the job they want done.

The CHAIRMAN: The only thought I have in mind there is from my experience in the past we should get an explanation of the purpose for changes when they are made without actual cases, because situations may arise in the future, not thought of now, and we may provide something in legislation that was not intended to apply to that new situation; but if we have it in the law it is there, and it becomes applicable. Therefore, I want to know everything they had in mind when they proposed this change in language.

Senator THORVALDSON: Following what Senator Croll has said, I think you can have a good look at the draftsmanship. The previous section says:

"The part of his income for the year that may reasonably be attributed to the duties performed by him in Canada..."

There is an element of discretion there. Somebody is going to have to determine something about what the income was—that is part of the law. I want to limit discretion wherever I can. From my point of view it seems to me that the amendment is absolutely clear and concise, and simply says that his income for the year from all duties performed and so on, is taxable. I do think that there is a real benefit in the draftsmanship of the amendment.

The CHAIRMAN: I still think that if a non-resident operating in Canada a business and is also operating a business in the United States and if he is being paid a salary by one or the other of these businesses, the question arises as to the apportionment of that salary as between the operation that he does in Canada and that which he does in the United States, and I say that question is still to be resolved under the change as it would have under the present language. If a man has these two businesses and is drawing a salary from one of \$25,000 a year, and he works for both, the problem of the apportionment of that income would still have to be determined. There would have to be an adjustment made and under this amendment the department would not be able to allow the apportionment.

Senator THORVALDSON: In the final analysis the apportionment comes to a decision of the courts namely that if a man challenges the correctness of what

is stated to be his income, of course he has the same right to challenge that as anything else, and the court will eventually decide.

Senator McKEEN: Mr. Chairman, I am wondering if there is anything in this that allows an adjustment as between the taxes a man has to pay who is in business in Canada and in the United States such as the capital profits tax which is not charged in Canada. As I understand, there is no offset against the capital profits tax collected in United States as regards taxes paid in Canada on that portion of the income coming from capital profits because there is no tax collected on that portion of the income in Canada and so as I understand, regardless of taxes paid in Canada by an American resident in Canada, there is no allowance made on the tax they collected in the United States as capital profits.

The CHAIRMAN: If he is working in Canada he does not have to account in the United States for personal earnings in Canada.

Senator McKEEN: But it is being done.

The CHAIRMAN: It does not have to be done. He does not pay any tax in the United States on the operation he has in Canada. He does on all other income.

Senator McKEEN: Yes, but what about the profits on sales of property and things like that?

The CHAIRMAN: Well, it is the long arm of the United States that takes care of that, but on personal earnings, no.

We are getting far afield on this. Mr. Irwin, is there anything more you have to offer by way of explanation as to why this change was made, from what Mr. Harmer has offered?

Mr. IRWIN: No.

The CHAIRMAN: Subsection (2) of section 6. This is a further amendment defining what a loss is. What have you to say about that, Mr. Irwin?

Mr. IRWIN: I think we have already dealt with that.

The CHAIRMAN: Shall the subsection carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Subsection (3) of section 6 deals only with when it comes into force.

Shall the subsection carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 7. Would you care to give an explanation in relation to section 7, Mr. Irwin?

Mr. IRWIN: Section 7 deals with the calculation of investment income. It is necessary to calculate investment income because it bears an additional 4 per cent surtax. The Income Tax Act defines investment income by first laying down the rules for the calculation of earned income and providing that everything that is not earned income shall be investment income. As a result of this it is necessary to provide that every deduction from income shall also be a deduction from earned income as otherwise the deduction would go to reduce the investment income and thereby reduce the investment surtax. The act provides under paragraph (u) that certain amounts taken from a pension plan and transferred to another pension plan may be deducted from income and under paragraph (v) that certain amounts may be deducted from income on account of estate tax or succession duty.

The CHAIRMAN: We have dealt with that in section 1?

Mr. IRWIN: Yes. This amendment provides that those two deductions shall be regarded as coming off earned income.

Senator BRUNT: You made the statement, Mr. Irwin, that earned income was fully defined under the act and everything else was then classed as investment income. Is that correct?

Mr. IRWIN: Yes.

Senator BRUNT: Then you define rent as earned income?

Mr. IRWIN: Yes.

The CHAIRMAN: Yes, it is.

Shall section 7 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 8. That section seems to speak for itself.

Shall section 8 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 9. Mr. Irwin, have you anything to offer on this?

Mr. IRWIN: This is intended to prevent a taxpayer benefiting under two sections. The act permits a taxpayer to make certain deductions, as I have just mentioned, when he transfers money from one pension plan to another, or he may be allowed to make certain deductions on account of estate taxes that have been paid on a pension benefit. This amendment will prevent him from taking a corresponding amount of income and having it taxed at special rates provided by section 36 of the Income Tax Act.

Senator BRUNT: Have you run into a case that made this amendment necessary?

Mr. IRWIN: I am not sure whether there were any cases but it seemed to us that this is the sort of thing that should not happen.

Senator EULER: Mr. Chairman, might I refer to a statement made by Senator Brunt. I think he said that rent is regarded as earned income.

The CHAIRMAN: Yes.

Senator EULER: It is not investment income?

The CHAIRMAN: That is right, it is not.

Senator BRUNT: You pay no surtax on rent.

The CHAIRMAN: In this section 9, Mr. Harmer, have you run into any situation where there was an attempt to get a double benefit?

Mr. HARMER: No, Mr. Chairman, we have not, because the section already prevented the double benefit in respect of deductions previously allowed under section 11 (1) (u), and in this year the only change is to add (v).

The CHAIRMAN: Shall section 9 carry?

Hon. SENATORS: Agreed.

Senator MACDONALD: Mr. Chairman, might I revert to the question raised by Senator Euler. Senator Euler is surprised that there is not a surtax on rent. Might I ask the officials of the department if a return is filed and the person filing the return is not aware of the fact that rents are considered as earned income does the department peruse the return and if it notices an error has been made does it advise the taxpayer of that?

Senator ASELTINE: The forms are very, very clear.

Senator MACDONALD: The forms may be clear, but if someone makes a mistake, and a mistake of that kind could run into considerable money, does the department inform the taxpayer that he has made this mistake?

The CHAIRMAN: Mr. Harmer, will you answer that?

Senator EULER: Well, they have never done it. I have paid surtax on rents all along. I suppose I am entitled to a refund over the years. I never knew that.



The CHAIRMAN: Mr. Harmer can give an answer to your question.

Mr. HARMER: Mr. Chairman, my answer is that we make every effort to catch such mistakes and to correct them but from what Senator Euler says apparently we have not been completely successful.

The CHAIRMAN: Shall section 10 carry? We have already passed section 10.

We come now to section 11 on page 8, which deals with the rules for determining when one corporation is associated with another. Would you care to lead the explanation, Mr. Irwin?

Mr. IRWIN: The proposed amendment will replace the present 70 per cent ownership rule with a rule related to control of corporations. The Government felt this change was necessary because it has been found that companies can be split up under the 70 per cent ownership rule in such a way that control of the new companies—and a large part of their income—remains in the hands of the owners of the original company. In this way the split-up companies obtain the benefit of the lower rate on the first \$25,000, and what is really a large business which should pay a rate of 50 per cent on all profits in excess of \$25,000 so arranges its affairs that all its profits are taxed at only 21 per cent.

The CHAIRMAN: Let us take an illustration. We start out with two companies under the present law and you have a share allocation of, say, 69 per cent and 31 per cent, so that you have got a man in one company holding 69 per cent of the shares in the company or he holds 31 per cent of the shares. Under the present law wouldn't those two companies still be associated companies?

Mr. HARMER: It depends on who owns the other 69 per cent of the second company.

The CHAIRMAN: Let us assume they are at arm's length.

Mr. HARMER: They are not associated companies under the present law.

The CHAIRMAN: They are not associated companies under the present law, but under the proposed amendments they would still not be controlled companies, isn't that right?

Mr. HARMER: That is right.

The CHAIRMAN: The control may be recognized at 51 per cent so you are reducing the 70 per cent to 51 per cent, isn't that right?

Mr. HARMER: In effect.

The CHAIRMAN: Would you attempt to reduce it further, Mr. Irwin, in line with what is recognized on the street as being effective control as opposed to majority holding of shares?

Mr. IRWIN: Our legal advisers informed us, Mr. Chairman, that the courts have interpreted control to mean over 50 per cent, and the Department of National Revenue would have great difficulty in proving that there was control if there was less than that amount of ownership, even though it might be generally understood that a smaller shareholding did give the effective control. The interpretation of the present law will, of course, be determined by the Department of National Revenue.

The CHAIRMAN: What I think we are entitled to get at this time is what is your concept of control, for you have used the words "control" and "controlled". Now, in using them what do you intend it to cover in relation to holdings of shares? Anything over 50 per cent? Who is going to answer that?

Senator CROLL: Didn't Mr. Irwin say that they considered better than 50 per cent as control, and they were relying upon what they considered a legal position which bound them, and said that the effective control to which you have reference may exist but not legally in their minds.



The CHAIRMAN: He didn't put it that way, at least it did not seem to me he did. That is why I put the specific question, which was that in using the word controlled in this section 11 is it intended to cover any situation where shares are held by one person to the extent of more than 50 per cent? Is that what you mean by control or controlled?

Mr. IRWIN: May I answer it this way? It is not anticipated that this amendment will be used to regard companies as associated where the control may be effective control because of the ownership of a large block of shares which may fall well below 50 per cent.

The CHAIRMAN: That is just begging the question too because then you are saying it is a matter of degree how much below 50 per cent the large block may be. I just wanted a very simple statement. If the block is less than 50 per cent is it your intention in enacting this clause to apply the rules in this control clause to such a situation?

Mr. HARMER: Perhaps I could try to answer that, Mr. Chairman. Your original question, as I understood it, contained only the word "owned" as to 51 per cent or more, but I do not think it was our intention to limit control to cases where ownership involved 51 per cent or more. Instead, what I think the section is intended to do is to look at what you might call control of the shares either by ownership or by the existence of a voting trust or an option to acquire the shares on certain conditions or something of that nature, but apart from the play with respect to that word "owned" then I think my answer would be yes to your question, that this was our intention, to look at 51 per cent control of shares but not necessarily 51 per cent ownership.

The CHAIRMAN: No, but there would have to be at least a block of 50 representing over 50 per cent of the issued voting shares before the question of control would arise.

Mr. HARMER: That is right.

The CHAIRMAN: And that block might be by virtue of ownership or voting trust or by some other fashion.

Mr. HARMER: Yes.

Senator BRUNT: Is there any reason why you don't define control?

Mr. HARMER: We were told by the draftsmen that that had been so well done by the courts, Senator Brunt, that it would be redundant to put it in the law.

Senator BRUNT: Oh, I have heard that so often.

The CHAIRMAN: The Companies Act defines a subsidiary company as being 51 per cent of whose shares are held by another company, so I suppose you would regard a subsidiary company as a controlled company?

Mr. HARMER: Yes.

The CHAIRMAN: And is that the definition which you would rely on?

Mr. HARMER: No, sir. I think we rely on the whole jurisprudence, whatever that consists of; I am not an expert on it.

The CHAIRMAN: You have to define "control" in the statutes in relation to a particular situation. It should not be too difficult to define "control" in another situation, should it?

Senator BRUNT: Before we leave this, and I give an example, are those all control companies?

Mr. HARMER: Mr. Pook is examining that, sir.

Senator CROLL: We have no idea what the example is.

Senator BRUNT: I will give it, if the senators want to take it down. I think you have to get the formula before you.

Senator CROLL: All right, go ahead.

Senator BRUNT: You take "W" company. 29 per cent of the stock is owned by "A", 20 per cent by "B", 21 per cent by "C", 30 per cent by "D"; that ends that company. The next company is "X" company. 26 per cent of the stock is owned by "C", 20 per cent by "D", 30 per cent by "E", 19 per cent by "F"; that ends that company. "Y" company. One per cent by "D", 20 per cent by "E", 30 per cent by "F", 20 per cent by "G", 29 per cent by "H"; that ends that company. The last company is "Z" company. 20 per cent by "F", 31 per cent by "H", 20 per cent by "I", and 29 per cent by "J". There are your four companies. They are all related companies.

Senator ASELTINE: Why would they be?

Mr. POOK: Assuming that all of the shareholders that have been mentioned are dealing at arms' length with each other and not related persons, it would be my opinion that none of these companies are associated.

Senator BRUNT: "W" and "X" are associated because C and D control both of them, don't they?

Mr. POOK: C and D could control both of them, but there seems to be no reason to assume that they do.

The CHAIRMAN: But if they are at arms' length how do you assume they will work together?

Senator BRUNT: I am very happy if they are not associated, as a matter of fact. I do not want to enlarge this definition.

The CHAIRMAN: No, but you put the proposition and the witness has given his answer. I do not think it is any part of our job to argue him out of his answer.

Senator LAMBERT: From the practical point of view what if the basis of control is over 50 per cent?

The CHAIRMAN: What I understand the witness to say, Senator Lambert, is that control as used in this section encompasses more than the ownership of over 50 per cent of the shares. You may control over 50 per cent by a voting trust, and that would bring it within this section 11 of the bill in just the same fashion, and that may account for the reason you have the exception on the next page, that is, that where a bank, for instance, might take transfer to itself or to a trustee of a majority of the issued shares of a company to safeguard an investment that is already made, that is not regarded as control so as to make the bank and the industrial company associated companies. Is that not right, Mr. Harmer?

Mr. HARMER: Yes, sir.

Senator LAMBERT: Then what does legal ownership mean?

The CHAIRMAN: It does not say legal ownership in the section, but uses the word "control" and "controlled", and you can control by ownership or control by agreement.

Senator LAMBERT: I see your point all right, but I think from the point of view of taxation the terms are practically synonymous.

Senator PRATT: Mr. Chairman, to bring this matter down to a concrete example. Take a company that has probably 50 shareholders. Supposing the company is going behind, its outlook is not too good, and some one goes in and perhaps gets a 51 per cent control, yet there may be anywhere from 20 to 50 other shareholders. Simply because that man goes in and takes over and gets control of the earnings of that business, for the purpose of this basic taxation are those earnings in effect to be pooled with earnings that that man may have from other corporations, in which he does have actual control of the shares, and so on? What about the minority shareholders? There are

numbers of instances, I am sure, that have come to light in the application of this at the 70 per cent rate that probably would not have notice to bring it down to a bare 51 per cent, and you are going to have any number of instances—

The CHAIRMAN: But you have to add another bracket, Senator, before the section starts to operate. That is, you have to start up another company. Otherwise, the question of associated companies cannot arise. If there is only one company, the problem of control does not arise.

Senator PRATT: Yes, but an individual may already have a company which he controls, and he may get 51 per cent interest in another company; then that other company does not stand on its own with respect to this taxation, and the earnings of the other interests the man has are brought into relationship one with the other.

The CHAIRMAN: Yes. Of course, there are provisions in the act at the present time under which the associated companies may share in the lower rate of tax on the first \$25,000. They have to agree on the proportions that each will take or the minister will fix it.

Senator PRATT: But they should not be regarded as associated companies when there is no interlocking relationship in trade, and so forth, and when they are separate entities and the one has no relationship with the other.

Senator LAMBERT: The companies would be owned by the same man.

Senator PRATT: Yes. If the man is going to control the business he would have to take 51 per cent control in order to do so.

The CHAIRMAN: The principle is this, that we have a general corporate rate of tax that applies to all companies. Now, we are going to give some benefit to some sections and give them a lower rate of tax on earnings up to \$25,000. I mean, if we are going to have that difference in rate, which is substantial, then the Government as a matter of policy has laid down certain rules as to the situations in which they can apply; because I think when this change first came in there were a tremendous number of new companies formed and there was a subdivision of operations so that as many as possible would get the benefit of the 25 per cent. Well, I do not suppose as a matter of Government policy it was intended to make the benefit of that lower rate available indiscriminatory, and they have laid down rules. Of course, once you lay down rules somebody's toes are going to be stepped on somewhere along the line. You cannot legislate for individual cases.

Senator PRATT: Can it be envisaged that companies could be set up separately, and make separate returns without at the same time having to go to all the expense of setting up a separate company? That does not seem reasonable.

Senator LEONARD: Am I not correct in saying that the present act is beneficial in the case that has been cited, that the second company is able to pay taxes which are less than it would pay when the two companies were under separate ownership. The only purpose of the act is to prevent that operation being carried on a second, third and fourth time, and to prevent what are really artificial divisions of the original two companies.

Senator PRATT: Where there is an intention, surely, to avoid taxation there should be some provision whereby the authorities can prevent it.

The CHAIRMAN: I do not think Senator Leonard's application is correct because you start off with each and every company being entitled to the lower rate on the first \$25,000 of income. If you put two of those companies which are entitled to that together then they are splitting up one amount of \$25,000, so there is a disadvantage. It lies in the hands of those people, when they



know what the law is and what the rules of the game are, to play the game according to the rules and to get the benefit of the \$25,000. Shall this section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: There is the saving provision. I think we have already talked about that. Are you satisfied that that is clear enough in the illustration I gave of the bank?

Senator BRUNT: Yes.

Hon. SENATORS: Carried.

The CHAIRMAN: The next section is section 12. I think section 12 is clear. We have had legislation dealing with some aspects of this before us already. It is with respect to the credit for corporation tax, 10 per cent in Quebec and 9 per cent in Ontario; is not that right, Mr. Irwin?

Mr. IRWIN: The general abatement is nine percentage points. This amendment provides for this to be increased to ten percentage points in a province that enters into an arrangement under which it pays university grants itself and does not receive grants to universities from the federal Government.

The CHAIRMAN: We had this before when we were dealing with the Quebec grants a short time ago.

Senator BRUNT: Yes. It only relates to Ontario and Quebec, I think?

The CHAIRMAN: Does that section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: What have you to say about section 13, Mr. Irwin? This deals with those foreign rules that are applicable to all taxpayers in relation to foreign tax deductions. Again we have a change in language in this. I am awfully curious to know why the change is made. I think at the bottom of page 10 you have the words "any income or profits tax", and I think in the present statute it reads "the tax". Can you explain to me why the change is made? Is there anything intended to be covered by the change of language that is not covered by the present words "the tax"?

Mr. IRWIN: This section, as you have stated, deals with the calculation of credits for foreign taxes, and the most important change that is made here will make less restrictive the rules for calculating foreign tax credits by withdrawing the present rule that income in respect of which the credit is computed must have been taxed in both the foreign country and in Canada. In keeping with that change in rules for computation of tax it has been necessary to change the wording.

The CHAIRMAN: Wait a minute, now. You said that this change in section 13 would do away with the requirement that the income must be taxed in both places. Is that what I understood you to say?

Mr. IRWIN: That is correct.

The CHAIRMAN: Well, there is an exception in this definition.

Mr. IRWIN: Yes, there are exceptions.

The CHAIRMAN: If a Canadian company or an individual received dividends from a company in the United States, more than 25 per cent of the stock of which is owned in Canada by another Canadian company, the Canadian company will receive those dividends free of any Canadian tax; is that right?

Mr. IRWIN: Yes.

The CHAIRMAN: Therefore, when I started to talk about foreign tax credits, as I understand it on reading this, I do not get any credit for withholding tax in the United States on those dividends which are not subject to tax in Canada?



Mr. IRWIN: Yes, dividends which are not taxable in Canada are excluded from this calculation.

The CHAIRMAN: When you said this change is in the rule that income had to be taxed in both countries before you can get a foreign tax credit—that still is the rule, is it not?

Mr. HARMER: Perhaps I could try to explain this by the use of an example. Under the present law an individual in Canada who receives a dividend from the United States, of say, \$100 on which 15 per cent tax was deducted at the source might, in Canada, have carrying charges to offset against that dividend of, say, \$50. In effect, therefore, his income from that foreign source subject to Canadian tax would only be the \$100 less the \$50 carrying charges, or \$50 net, on which he would pay Canadian tax. Presently we have been saying that his foreign tax credit would have to be related to only that part of the income which bore tax in Canada. In other words, although he paid 15 per cent of the gross dividend of \$100 we would only allow him 15 per cent of the net of \$50 which he was going to pay tax on in Canada. The effect of this amendment would be to allow him the full 15 per cent of the \$100 which he received, even though in Canada he would only be paying tax on \$50. I think Mr. Irwin's statement that the income did not have to be taxed in both countries is correct because we are not taxing in Canada the part that is offset by the carrying charges.

The CHAIRMAN: Supposing a man had borrowed money to make the investment in the United States from which he got this income of \$100. Suppose he borrowed the money in Canada, and makes an interest deduction from the income which wipes out the income so far as Canada is concerned. Do you say in those circumstances by virtue of this amendment, that he would get the full credit for the withholding tax in the United States?

Mr. HARMER: There are two parts to that allowance for foreign tax credit in this section. One of them is the one we have been talking about, which has relation to the tax actually paid in a foreign country; but there is a second limitation governed by the effective rate of the Canadian tax paid. It is only the lesser of those two amounts that he gets. In the example you gave this second limitation would come into effect, I would think.

The CHAIRMAN: It might or might not. Let us assume that the rate of tax which he would pay in Canada would be in excess of 15 per cent, even after he deducted his interest from income in the United States. Would he then be entitled to deduct the full amount of the withholding tax.

Mr. HARMER: I don't quite understand how much income he is left with in Canada, in your example.

The CHAIRMAN: I am assuming he got \$100-worth of income by way of dividends from the United States, and \$15 withholding tax. When he comes to Canada he has additional income in Canada, he has expenses and he has interest he paid on money he borrowed to buy that stock in the United States. Let us assume that when he is figuring his Canadian tax, even though he took a credit for the interest and therefore offset the \$100 of income in the United States—

Mr. HARMER: To the full extent?

The CHAIRMAN: Yes, to the full extent—he still pays a rate of tax in Canada that is greater than 15 per cent.

Mr. HARMER: But he would not be paying any tax on this, because there was no income left after this deduction. So, he would get no deduction.

The CHAIRMAN: He would get no deductions?

Mr. HARMER: That is right.

The CHAIRMAN: But you do put in a separate package the U.S. income that comes in, and you would be proposing to offset against it the interest that he paid on borrowed money to acquire that asset in the United States, is that right?

Mr. HARMER: Yes.

The CHAIRMAN: That is not the present practice.

Mr. HARMER: My understanding is that is the present practice.

Senator LAMBERT: That is a hypothetical case. An example of \$100 hardly leads you anywhere, without considering the total amount of income the taxpayer might receive. What bracket is he in?

Mr. HARMER: Let us say he is in the 50 per cent bracket. In that case he would still get his 15 per cent, even though he was in the 50 per cent bracket.

Senator BRUNT: The opinion has been expressed that under these amendments, now that capital gains tax has been imposed in the United States, that now can be taken off. Is that correct?

Mr. HARMER: I think, senator, under this wording of any income or profits tax, it is true that a capital gains tax would come in under the first part of the calculation. Whether it would in fact be allowed would depend on the second part of the calculation, which is still dependent on the effective Canadian rate on the Canadian income.

Senator BRUNT: Could you give us an example where the capital gains tax might be allowed, and another example where it might not be allowed?

Mr. HARMER: If, for instance, the taxpayer we are speaking of had nothing but capital gains in the United States, then the effect would be that he would get no deductions against his Canadian tax, because there was no income from that source taxed in Canada. Therefore, under paragraph (b) there would be no allowance. But if he has besides his capital gains on which he paid a capital gains tax in the United States, any income subject to say 15 per cent income tax, then the two taxes would be lumped together for the purpose of paragraph (a) of section 41, but it would be limited to the effective Canadian rate on the income taxed in Canada; and if, for instance, he was in the 50 per cent bracket in Canada, the effect of having paid the capital gains tax would be to give him more than the 15 per cent he paid on the income which is so taxed in Canada.

The CHAIRMAN: May I try to re-state that proposition? The capital gains tax is 25 per cent.

Senator BRUNT: Take it on the basis of holding the securities for more than six months.

The CHAIRMAN: I receive moneys from that source which do not enter into my Canadian tax calculation at all, but I have income in Canada, the receipt of which is to put me in the 50 per cent bracket in Canada. Now, I still can't bring in the 25 per cent, if I have no other foreign income; I have to have other foreign income that is subject to tax in the United States. If I have other foreign income which is subject to a withholding tax of 15 per cent, and my overall rate in Canada is 50 per cent, would I be able to deduct the sum total of capital gains and withholding tax paid in the United States, or would I be limited only to the withholding tax?

Mr. HARMER: Could I get back to my original example of \$100. Let us say he had two \$100 items in the United States, one of which was subject to 25 per cent capital gains tax, and the other was subject to 15 per cent ordinary withholding. In effect, he has paid \$40 tax during the year. But in Canada his income is only \$100 because we don't tax the \$100 capital gains.

Now, he has an effective rate in Canada of 50 per cent which means his tax on that in Canada would be \$50. The allowance in this case would be the lesser of the two, which is \$40, a combination of the two taxes in the United States, or \$50, which is the effective rate of the tax on the \$100 taxable in Canada.

In that case he would get the full capital gain tax.

Senator BRUNT: But if he were in the 20 per cent bracket—?

Mr. HARMER: He would get only 5 per cent.

Senator BRUNT: He would get \$20 instead of \$40?

Mr. HARMER: Yes.

The CHAIRMAN: The moral is that the people who are making capital gains in the United States and have substantial income in Canada, should also acquire income in the United States from other sources if they want to get any benefit from the combination of the capital gains tax and withholding tax in the United States on their Canadian income.

Senator ASELTINE: That would be the usual situation. I do not think there would be very many cases where persons would have only a capital gains tax, and no other.

The CHAIRMAN: I don't know how often it would happen.

Senator BRUNT: I disagree with the chairman's statement, because one income tax return a year is enough to file.

The CHAIRMAN: I was curious, in view of that philosophy, what your interest was in learning how this applied, if you are going to confine yourself to Canadian investments completely.

We have covered everything in relation to section 13.

Senator ASELTINE: Carried.

The CHAIRMAN: Section 14. That seems to be a straightforward section. Do you care to add anything to it Mr. Irwin?

Mr. IRWIN: This is mainly technical. The underlined words have been added for clarification. When the section of the act referred to was first enacted, the section 14 referred to had no subsections. Since that time a subsection has been added to it. It was necessary to have this clarification.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 15.

Senator BRUNT: This one should be amended. This has to do with the four-year period.

The CHAIRMAN: Yes. As I understand it—and Mr. Irwin can correct me if I am wrong—this makes the four-year period run not only from the assessment, if an assessment is made, but also from what we have been calling a nil assessment.

Mr. IRWIN: That is right.

The CHAIRMAN: Heretofore the approach was that, having regard to the Okalta case which was decided in the Supreme Court of Canada some years ago, a nil assessment was not an assessment, no time was running until there was an assessment. I understand, particularly in the case of some oil companies, it looked as though there might be a long time, perhaps as much as five or ten years, when everything would be in suspense because they had no taxable income.

Now it is crystallized, and the four years runs from the date of a nil assessment. Is that right?

Senator BRUNT: Well, if there is any doubt as to the date would you take the date of mailing?



Mr. IRWIN: Yes, this makes it clear that your four-year period starts from date of mailing.

The CHAIRMAN: There is also a provision here which you might explain, about a taxpayer filing a waiver to stop the running of the four years. That must be where he is going to get some benefit and cannot accomplish it within the four-year period. Is that right?

Mr. IRWIN: As I understand the situation, Mr. Chairman, there may be discussions going on between the minister and the taxpayer as the four-year period during which the minister may re-assess is drawing to a close, and the taxpayer may not want to have a re-assessment until he has had a chance to fully document his case, but as the law stands at present the minister has no alternative but to re-assess during the four-year period or lose all right to do so. This permits the taxpayer to waive the four-year limit so that he can document his case fully.

Senator BRUNT: And do away with arbitrary assessments?

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 16. This is one section that to me is very intriguing, and if you can qualify the situation I would appreciate it very much. I was trying to find out what the difference was between, "knowingly or under circumstances amounting to gross negligence" in section 16 of the bill as against, "wilfully in any manner evaded or attempted to evade payment of taxes" in section 56 of the act.

What are the yardsticks for determining when it is wilful evasion as against knowingly or under circumstances amounting to gross negligence?

Mr. HARMER: Mr. Chairman, my understanding is that there is no difference between "wilfully" and "knowingly."

The CHAIRMAN: I did not think there was.

Mr. HARMER: There is, though, I think, an additional change in the section by the addition of these words, "under circumstances amounting to gross negligence".

The CHAIRMAN: Yes, but they are disjunctive, didn't you notice that? If he knowingly does something under section 16 he can be assessed a penalty of 25 per cent, or if under circumstances amounting to gross negligence—as I say, it is disjunctive. You have 'wilfully' in clause 16 and 'wilfully' in section 56 of the act.

Senator CROLL: Mr. Chairman, it may be on the strict interpretation of the language, but is not the effect of this section to give the department some discretion in cases where they felt they were doing a gross injustice and they had to put it under the fraud section whereas as a matter of fact they were not quite sure that there was fraud and and this gives them an out. It may be a border-line case and if they feel that they must assess the full penalty the only thing they can do is to impose a 50 per cent penalty.

The CHAIRMAN: It is not 50 per cent, it is 25 per cent to 50 per cent. The range is 25 to 50 per cent.

Senator CROLL: Yes, I appreciate that. I see I am wrong on that.

The CHAIRMAN: On the question of fraud, it strikes me that if a person knowingly does what is set out in section 16 that is just as much a fraud as a person who wilfully does something under section 56 of the statute, as it stands at the present time.

Mr. HARMER: That is right.



The CHAIRMAN: I am not trying to make it difficult, but what I am trying to do is to find out what there is different in this bill, and what kind of situation are you intending to reach.

Mr. HARMER: I think the section is wider by the addition of the words "or under circumstances amounting to gross negligence" and for this reason we believe there will be more cases caught under this section than were under the old section 56. Secondly, the change, as you have already mentioned, is in the amount of the penalty which has been altered from a discretionary penalty of somewhere between 25 and 50 per cent to a flat 25 per cent. This is something we, as administrators, desired because we felt that we do not like being in the position of judge, jury and executioner, and we thought that there should be a penalty that applied if the circumstances warranted it, and we should not be asked to judge whether it should be greater or smaller.

Senator BRUNT: But you are going to still have to do that.

Mr. HARMER: Not in amount.

Senator BRUNT: No, but in percentage, 25 per cent to 50 per cent where there has been evasion.

Mr. HARMER: The intention there is that section 56 which now becomes subsection (1) was being left in the law merely to take care of cases where offences had occurred up to the time this became law but which would not be caught by us for say, three, four, five or more years. This new section can only be applied in respect of offences occurring after the date it becomes law, and this would be the only operating section after the time when other offences that have occurred up to that date have all been caught up to.

Senator CROLL: Then we should welcome it?

The CHAIRMAN: I welcome it.

The saving clause on top of page 14 is only this, that they cannot proceed against you under both subsections. That is all it says. The sort of thing I understood Mr. Harmer to say was that as of when the present section 56 has run its course in relation to any cases that are afterwards discovered in relation to the period down to the time when this section becomes law and that will be the end of it.

Senator BRUNT: It is not.

The CHAIRMAN: I cannot find it in the act.

Senator CROLL: Now, administratively he says that will be the end of it.

Mr. HARMER: I think it is a little more than administratively. My understanding of the way this will operate is this, that as we mentioned before, "knowingly" in the new section and "wilfully" in the old are the same thing and therefore if you can get a person under new subsection (2) because he knowingly did something then this subsection 3 says you can penalize him under (2), and you cannot penalize him under (1).

The CHAIRMAN: Subsection (2) of section 16, on the next page may be the one that does it. It says, "(2) This section is applicable in respect of any statement or omission in any return, certificate, statement or answer filed or made after the coming into force of this section." It says that this section is applicable but it does not say that the other one is inapplicable.

Mr. HARMER: I think the paragraph ahead of that makes it inapplicable because you can penalize them on offences occurring after this becomes law, and the paragraph at the top of page 14 says you cannot penalize him under the other.

The CHAIRMAN: It seems to me you still have the choice. I am very happy, and I would welcome the idea that the present section 56 is going to lapse

after you have dealt with all the cases that might arise in the period down to this date. If that is the intention I think it should be more clearly stated in the statute.

Senator THORVALDSON: Can you give an example? Can you give me an example of the difference between wilfully and, say, where there is an element of gross negligence? I find it very difficult to know what is involved in gross negligence when it comes to an income tax return.

Mr. HARMER: I would find it very difficult to give you an example of an actual case, senator, but the theory is this. At the present time we are told that in order to prove a man has wilfully attempted to evade tax you have to have all the kinds of proof you could use in a criminal court to support a criminal charge.

Senator BRUNT: There has to be *mens rea*.

Mr. HARMER: Yes. Whereas we think this gross negligence does not go quite as far as wilfully. We are not sure how much short of that it falls, but we don't think it is going to be quite as difficult to prove in court. There are, as one honourable senator mentioned earlier, some cases which are borderline. A reasonable person in our department, let us say, might feel there has been evasion or an attempt at it but he just cannot obtain the kind of proof he would need to support a criminal prosecution.

Senator THORVALDSON: I can easily understand the meaning of gross negligence when it comes to automobile accident cases, and so on, but I find it very difficult to apply to income tax matters.

Senator BRUNT: You will be able to cite these automobile cases as precedents.

Senator THORVALDSON: For instance, would it be gross negligence if I simply had my income tax matters looked after by my secretary and I just signed the return and did not bother to verify things in it myself? Would that be considered negligence or gross negligence?

Mr. HARMER: I can only give my personal views on that. In the example you have stated if you signed your return saying that your income was only \$1,000 for the year and you knew very well it was several times that amount, I would think that would be gross negligence.

Senator THORVALDSON: I recognize that, but I was thinking of where I had negligently delegated authority or I was probably innocent of that knowledge. In a case like you have suggested, it would be outright evasion.

Senator BRUNT: This will be the section you will use on all returns commencing with the current year?

Mr. HARMER: Unfortunately there will be a year in which some offences will be under the old and some under the new, for this will come into effect in the middle of the year.

The CHAIRMAN: If the intention is that in the future as and from the date that this section becomes law that only subsection (2) in this bill will apply to these situations, if they said this section is the only section that is applicable in respect of any statement after the coming into force—"filed or made after the coming into force,"—that would, of course, make it absolutely clear.

Senator BRUNT: I presume there would be no objection to that amendment.

The CHAIRMAN: I only raised that to crystallize the issue.

Senator LAMBERT: It is clear now.

The CHAIRMAN: I don't want the taxing bill to force something suddenly when you have not had a chance to study. As a matter of fact, I think if the departmental officers affirmed that after this section becomes law should any

situations arise in relation to any filing or any statement made in a return after that date will be subject only to subsection (2) of section 16 and not to the old section 56, I think we would be satisfied with that.

Senator BRUNT: We would be quite prepared to accept that.

Mr. HARMER: That is our intention, and we were told by the draftsmen of the Department of Justice that this is what the subsection accomplishes.

Senator BRUNT: Of course, we don't always agree with the Department of Justice with regard to the drafting of bills.

The CHAIRMAN: Shall clause 16 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 17 is very simple. We dealt with it yesterday. It is clear. Shall it carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 18 deals with the proceeds of distribution. Have you a word to say about that, Mr. Irwin?

Mr. IRWIN: Subclause (1) of clause 18 deals with depreciable property in the hands of an estate or trust. It provides that if such property, on which capital cost allowances have been taken, is distributed to the beneficiary the distribution shall be treated for tax purposes as a sale.

Senator BRUNT: Would you give us an example with figures?

The CHAIRMAN: You mean for purposes of recapture the asset would have to be valued at its then market value or at its depreciated cost?

Mr. HARMER: At its then market value.

Senator BRUNT: In other words, if the property was worth \$20,000 and depreciated down to \$10,000 the transfer would be at \$20,000?

The CHAIRMAN: That's right, and if there is any incidence of recapture somebody has to pay.

Senator BRUNT: Somebody would be nailed for \$10,000.

The CHAIRMAN: Yes. Is that correct, Mr. Irwin?

Mr. IRWIN: As I understand the example.

Mr. HARMER: If they had already claimed this \$10,000 as capital cost allowance in computing income in prior years.

Senator BRUNT: But this deals with trust transfer.

Mr. HARMER: But the trust had, in this example, been using the property to earn income.

Senator BRUNT: That's right.

Mr. HARMER: And while it was so doing it was claiming capital cost allowance on, say, \$20,000 or whatever the fair market value was at the time the trust acquired it, and then by this process it had written it down to \$10,000 and then distributed it to beneficiaries—

Senator BRUNT: It is turned over to beneficiaries in accordance with a provision in the will.

Mr. HARMER: At that time the fair market value was still \$20,000, so in fact it had not depreciated at all so that the \$20,000 would be treated as though received as the sale price and the \$10,000 allowed as depreciation in prior years would be recaptured.

Senator BRUNT: You would attach the trust and not the beneficiary receiving it?

Mr. HARMER: This gets a little complicated.

Senator BRUNT: I would think so.



Mr. HARMER: The trustee is taxable on whatever income is left in his hands but not on what is distributed to the beneficiaries. Whether you can determine by these means income to beneficiaries that is only notional income, I am not too sure. Maybe MacLatchy has some ideas on this.

Senator BRUNT: Let us take an example where a trust company is the executor of a will and a trustee of an estate. It is an office building that is concerned and the will provides that the income is to be paid to the widow for so long as she shall survive the testator and on her death the building shall be conveyed to her son. The building is worth \$100,000. The trustee takes the capital cost allowance over the years, say, of \$50,000. Then on the death of the widow the building is transferred to the son. Let us say there is no argument about the building being worth \$100,000. When the transfer takes place who pays the tax on the \$50,000 that has been written off, and do you charge it all up in one year? Is it payable by the trustee? Is it payable by the widow's estate or is it payable by the son who now receives the building?

The CHAIRMAN: It is the vendor of the property who has got the benefit of the write-offs and therefore it is the vendor of the property who pays the tax.

Mr. HARMER: My understanding is that the trustees would be liable for the tax on \$50,000.

The CHAIRMAN: What have you been doing in practice up to the present time in a situation of this kind? Have you been applying the rule?

Senator BRUNT: What it means is that anything they set up for capital cost allowances they will have to retain it in either good trustee investments or cash until they dispose of all these assets. Is there any safety provision, supposing they did not take any capital cost allowances and the building was worth actually less than was taken into the estate tax?

Mr. HARMER: It would get the difference.

Senator BRUNT: What about the difference in that case?

Mr. HARMER: It would get that difference in computing the income of the trust.

Senator BRUNT: Oh, but the trust is being wound up.

Mr. HARMER: But it may not do them any good.

The CHAIRMAN: They are entitled to it, but it may not be of any value. Have you come up with an answer yet, Mr. Harmer?

Mr. HARMER: No. I wonder if we could come back to it later.

The CHAIRMAN: Yes. That is subsection (1), and we are dealing with section 18.

What have you to say about subsection 2, Mr. Irwin?

Mr. IRWIN: Subsection (2) is a technical amendment which corrects an oversight in the 1958 bill. Section 8(1) of the Income Tax Act provides that if a shareholder receives a loan from a corporation he shall be deemed to have received a dividend from the corporation. The law was amended in 1958 to provide that he would not be deemed to receive income if he repaid the loan.

Senator BRUNT: Within the year?

Mr. IRWIN: Yes, that is right, there was a time limit. At the same time, the dividend tax credit which the shareholder could have received in respect of that deemed-to-be-received dividend was withdrawn. We forgot, in amending the bill in 1958, to make a corresponding change in section 63(11)(a), and it is being done now.

Senator BRUNT: May I ask one simple question? Is this beneficial to the taxpayer?



Mr. IRWIN: No, sir.

The CHAIRMAN: No, it is not. Carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Subsection (3).

Mr. IRWIN: Subclause (3) is consequential upon the change being made to the provisions for calculating foreign tax credits.

The CHAIRMAN: It makes the same rules applicable?

Mr. IRWIN: Yes, sir.

The CHAIRMAN: Does subclause (3) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subclause (4), on the top of page 15?

Mr. IRWIN: This is also consequential upon the change with respect to foreign tax credits.

The CHAIRMAN: Does subclause (4) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subclause (5) just deals with the coming into force of the section. (Carried)

So we have carried all the subsections of section 18, except one.

Now, section 19 deals with personal corporations. Have you a brief explanation of that, Mr. Irwin?

Mr. IRWIN: Subclause (1) is simply a clarification of wording, and it is along the lines of the change I have just referred to in connection with section 63(11)(a).

The CHAIRMAN: If a personal corporation has an income from foreign holdings and they come into the personal corporation and are not distributed, the person whose personal corporation it is, is going to be taxable on that income, in any event. Is that right?

Mr. IRWIN: That is subclause (2).

The CHAIRMAN: Yes.

Mr. IRWIN: Subclause (1) deals with the dividend tax credit. Subclause (2) deals with the calculation of the foreign tax credit.

The CHAIRMAN: Yes. Does that carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subsection (3) is just the coming into force. (Carried)  
Section 20 is simply a change in the rate. That is on investment companies, is it not?

Mr. IRWIN: Yes, sir. This is relieving. This is a change that was overlooked in the 1959 bill.

(Carried)

The CHAIRMAN: Section 21. This is not relieving; this is providing that a non-resident owner company cannot claim depletion allowance, is it not?

Mr. IRWIN: That is correct, sir.

The CHAIRMAN: Where they may operate an oil well. The reason for that, I take it, is that they enjoy a special rate of tax?

Mr. IRWIN: Yes, sir.

The CHAIRMAN: And therefore there is little in the way of deductions that are allowed?

Mr. IRWIN: Yes, sir. If the non-resident shareholder received these dividends from a Canadian oil or mining company, or royalties from an oil operation directly, he would not get the depletion allowance, and I believe the

Government felt he should not get the depletion allowance if he received this income indirectly through a non-resident owned investment corporation.

—Section 21 carried.

The CHAIRMAN: Section 22?

Mr. IRWIN: This is a relieving amendment. Section 81(a) of the act provides that where a corporation has increased its paid up capital in any way other than in accordance with certain stated exceptions, the corporation shall be deemed to have capitalized undistributed income and this would give rise to shareholders being deemed to have received a dividend. This amendment makes it clear that a reduction of liabilities of a company with a corresponding increase in its paid-up capital, as for example the conversion of debentures into stock, shall not be deemed to be a capitalization of undistributed income.

The CHAIRMAN: Subsection (2)?

Mr. IRWIN: That is part of the amendment I have just explained.

The CHAIRMAN: Very well. Does section 22 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Would you just tell us about section 23?

Mr. IRWIN: This is also a relieving section. Section 105C of the act, which is referred to in this amendment, imposes a tax on new corporations formed by amalgamation in those cases where part or all of the undistributed income of a predecessor corporation has been drained off in the process of amalgamation. This amendment provides that in computing any undistributed income of the new corporation that has resulted from the amalgamation a deduction will be allowed of the amount of income on which tax has been paid under section 105C.

The CHAIRMAN: When you say "drained off" do you mean the physical operations that are required to withdraw that underdistributed income?

Mr. IRWIN: Yes, section 105C provides for a tax in certain cases.

The CHAIRMAN: That is right.

Mr. IRWIN: It is thought that if at some future time the department is calculating the undistributed income of that corporation it should receive credit for the fact that it has already paid tax in respect of a certain amount of undistributed income.

The CHAIRMAN: Yes, one of the corporations going into the amalgamation may have taken advantage of section 105C and paid its tax and created a preferred stock, and then there is the amalgamation. In those circumstances, if it has created a preferred stock, that may disappear in the amalgamation.

Mr. IRWIN: This particular amendment does not relate to what goes on before you have the new company formed as a result of an amalgamation. It only looks at the new company which has been formed by the amalgamation and provides a certain rule to be followed in computing the undistributed income of that new corporation.

The CHAIRMAN: Does this section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 24 simply permits a deduction of drilling and exploration costs for rock salt and potash deposits?

Senator BRUNT: It relates to a couple of new minerals.

Mr. IRWIN: Companies whose business is mining for potash or salt by conventional mining methods have had the right to deduct exploration expenses, but not all companies follow conventional mining methods and therefore did not qualify.

The CHAIRMAN: Does subsection (1) of section 24 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: What is the significance of subsection (2)?

Mr. IRWIN: Subclause (2) merely adds the word "exclusively" in two places to make doubly sure that only shares of the capital stock can be used as consideration in this kind of re-organization.

The CHAIRMAN: Shall this subsection carry?

Hon. SENATORS: Carried.

The CHAIRMAN: What have you to say about section 25, Mr. Irwin?

Mr. IRWIN: Section 25 deals with the situation where a person has been carrying on business in Canada and computing his income by what is generally known as the cash method. In such circumstances he does not take into account any accounts receivable or the proceeds from the sale of inventory until they are actually received. It might happen that a person who is carrying on business in this way and who had built up some accounts receivable ceased to be a Canadian resident. Under the existing law it would not be possible to bring those accounts into income. This provides that they may be valued and included in the income for the last year in which the individual resided in Canada.

Senator BRUNT: In the last year? You just take all of the accounts receivable and put them into his income?

The CHAIRMAN: They have to be valued.

Senator BRUNT: Yes, after a proper allowance is made for bad and doubtful ones.

The CHAIRMAN: Yes.

Senator BRUNT: And the same with respect to the inventory?

The CHAIRMAN: Yes.

Senator BRUNT: There is no averaging?

Mr. IRWIN: There are provisions for averaging, I believe, in connection with section 85F, and they would apply here.

Senator BRUNT: They would not be disturbed?

Mr. IRWIN: No.

The CHAIRMAN: Does section 25 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 26?

Mr. IRWIN: Subclause (1) is consequential upon the amendment dealing with transfers of—

Senator BRUNT: Does this deal with transfers between classes of depreciable property?

Mr. IRWIN: This subclause (1) is consequential upon that amendment.

The CHAIRMAN: Does subsection (1) of section 26 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: What about subsection (2)?

Mr. IRWIN: The law permits a taxpayer to make a deduction for bad debts, but it provides that if in a subsequent year he recovers any of the bad debts this recovery must be taken into income. This amendment will provide that a new corporation that results from an amalgamation will have to take into income any recovered bad debts that have been deducted by a predecessor corporation.

The CHAIRMAN: Does subsection (2) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: What about subsection (3) at the top of page 19?



Mr. IRWIN: This also refers to a new corporation that has been formed as a result of an amalgamation. It permits the new corporation that results from the amalgamation to set up a reserve in respect of uncollected proceeds of sales made by the predecessor corporation on the same basis as the predecessor corporation could have established that reserve.

The CHAIRMAN: Yes, it can proceed and deal with bad debts and reserves on the same basis as though there had been a continuity in the corporate operations?

Mr. IRWIN: That is its purpose.

The CHAIRMAN: Does that subsection carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 27 simply provides for another member of the Tax Appeal Board; is not that right?

Mr. IRWIN: Yes, sir.

Hon. SENATORS: Carried.

The CHAIRMAN: What have you to say about section 28, Mr. Irwin?

Mr. IRWIN: Subclause (1) is relieving. It refers to the special tax imposed by section 105C, and the amendment is intended to make it clear that the amount upon which tax is payable will not be increased by the tax itself. The calculation of the tax under section 105C depends upon the difference between assets and liabilities. One might argue that the tax is itself a liability, and if this were the case the tax would increase the amount upon which the tax is payable, which would in turn increase the liability, which would in turn increase the tax, and so on. This is intended to make it clear that that will not be—

Senator BRUNT: Can you give us a simple example of that?

Let us assume the assets are \$100,000 and the liabilities \$50,000, and the tax applied on the difference of \$50,000 would in this case be \$10,000. One might argue that the tax is a liability, therefore the liabilities are \$60,000.

Senator BRUNT: Yes, \$60,000. And it comes down to \$40,000, and 20 per cent would be \$8,000. That I like.

Mr. IRWIN: I am sorry. It is the difference between the net assets and the surplus. If you increase the liabilities you reduce the net assets. My example was wrong.

Senator BRUNT: I would just like to understand it clearly. Could you give us a simple example?

The CHAIRMAN: Take the same one. If the net assets are \$100,000 and the surplus is \$250,000, the difference is \$150,000, and you would pay 20 per cent of that. Is that not right?

Mr. IRWIN: That is right.

Senator BRUNT: That would be \$30,000.

The CHAIRMAN: Yes. Whereas, if you put the tax in as a liability your net assets would be less. The difference between the net assets and the undistributed income would be more, and your 20 per cent on a greater amount would produce more tax.

Senator BRUNT: Yes—clear as mud.

The CHAIRMAN: Carried. We have been talking about subsection (1) of section 28.

What about subsection (2) of that section, Mr. Irwin?

Mr. IRWIN: Subsection 2 is meant to plug a loophole. It refers again to this special tax that is imposed under section 105C, and it provides that in computing the liabilities of this new corporation for the purposes of arriving at the



base on which the tax should be applied all shares of the new corporation, other than common shares, shall be deemed to be liabilities.

The CHAIRMAN: The effect of that is of course to reduce the net assets, is that not so?

Mr. IRWIN: That is right, and to increase the base on which the tax would apply.

The CHAIRMAN: What is the principle behind that? Is it to prevent the dilution of undistributed income by creating more common shares? It would simply mean that people would create more common shares, wouldn't they?

Mr. IRWIN: It was found that the amalgamation of two companies could be used to extract undistributed income in a tax-free form. Section 105C was inserted last year to impose a tax of 20 per cent in the circumstances in which this occurred. It was found that the amendment passed last year did not cover all the situations.

The CHAIRMAN: They would create preferred shares and after an amalgamation would redeem them.

Mr. IRWIN: Yes.

The CHAIRMAN: You are plugging that loophole now. Well, it was a nice run while it lasted.

Subsection (2) of section 28, carried.

Subsection (3) deals with only the date of coming into force. Carried.

Section 29. Apparently sections 29 and 30 should be considered together. These sections, as I think I indicated yesterday, deal with withholding tax in three different categories. One category is, if an agent receives money that is payable to a non-resident he has an obligation to withhold, and if he does not withhold and has to pay it himself, he has the right to demand payment from the non-resident. Those are two classes?

Mr. IRWIN: Yes sir.

The CHAIRMAN: That is, he has to pay the withholding tax if he receives the money; even though he has paid it himself for the person entitled to the money, he has an obligation to pay X dollars.

Senator ASELTINE: Has that not always been the law?

The CHAIRMAN: I thought it was.

Mr. HARMER: The way the law was, objections were made that although the agent was liable to pay, he had no means of recovering it from the person he represented.

Senator ASELTINE: How is he going to recover?

Senator BRUNT: He can take it out of other moneys that come in.

Senator ASELTINE: He might not have any other money.

The CHAIRMAN: Then he would have to sue for it.

Mr. HARMER: I don't think we can help you there, senator.

The CHAIRMAN: Section 30 is a very ameliorating one. Heretofore, if you had a duty to withhold you were liable for 100 per cent of the withholding tax. Now the penalty is 10 per cent.

Senator BRUNT: Let us pass it.

The CHAIRMAN: Carried.

Section 31 simply provides for a penalty. This is a technical section.

Mr. IRWIN: Yes. It provides for the continuation of the present rule that a person who has been convicted under section 132 may not also be required to pay a penalty under clause 56 (1) for the same offence.

Senator BRUNT: Carried.

The CHAIRMAN: In practice you actually observe that, don't you?

Mr. HARMER: This is going to be a change.

The CHAIRMAN: I have heard it announced at times, if we prosecute we won't exact the civil penalty as well.

Mr. HARMER: This has been the case, but with this change from the old 25 to 50 per cent to a new flat 25 per cent, the thought is that we want to be able to penalize as well as prosecute in cases where the offence is vicious enough to warrant it; and we want to be able to do that after prosecution, not before, as was the case in the past.

The CHAIRMAN: Under this amendment you could only do it before any information was laid.

Mr. HARMER: Only under subsection (1) of section 56, not under subsection (2), which is the new penalty.

The CHAIRMAN: Under section 31, if you are going to impose a penalty you must impose it before the information is laid.

Mr. HARMER: If we impose that penalty under the old 56 (1), yes, but if we impose it under the new 56 (2), which is a flat 25 per cent, we do not have to do it before prosecution.

Senator BRUNT: You could do it at any time, either before or after.

Mr. HARMER: That is right.

The CHAIRMAN: What I do not like here is reference to section 56 (1), because we just had a statement from Mr. Harmer to the effect that, after this bill becomes law, subsection (1) of section 56 would apply only in circumstances that arose down to the date of the passage of the bill. Here we are giving power to continue to apply subsection (1) where there has been a conviction or proceedings leading to conviction. But if you are going to apply it, you must do so before you lay the information. It looks to me as if you are keeping a stick in both hands.

Mr. HARMER: No, that is not the intention. This is in the law now, in respect of the present penalty under section 56, which becomes 56 (1). The intention is to continue this provision until section 56 (1) runs out and then this will have no further effect.

The CHAIRMAN: Since we accepted Mr. Harmer's statement on the first part of this I am sure we are prepared to accept it on the second part, that there is a limited period of application.

Shall the section carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 32.

Senator BRUNT: I think we have dealt with section 32 already.

The CHAIRMAN: Section 32 is in addition to section 15, it is of the same ilk I would think. Is that right, Mr. Irwin? It deals with the mailing date?

Mr. IRWIN: That is correct.

The CHAIRMAN: And it provides for the exception in case of appeals that have already been taken.

Mr. IRWIN: Yes, it provides a rule for determining the date of mailing and for determining the date when an assessment, which includes a re-assessment, shall be deemed to be made.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Now, section 33 really covers a lot of pages, so much so that I made the suggestion to some people, not publicly of course, that I thought possibly we should enact as law what appears on the righthand side of the page because the explanations in some sections seemed to be very succinct and less difficult to interpret than what appears on the lefthand side.

Let us deal with subsection (1) of section 33.

Mr. IRWIN: This subsection deals with the definition of death benefits. It does three things: It substitutes a reference to employee's salary, wages and other remuneration in place of the present words which refer only to remuneration. This is intended to add a reference to the employee's basic remuneration, to his salary and wages, to make it a little more definite. The second thing it does is provide that where an employee dies without leaving a widow the exemption shall be apportioned among the beneficiaries in proportion to the amount received. This replaces the present rule which leaves it to the minister to decide who shall get the exemption. And thirdly, it covers the situation where an employee may receive a death benefit in respect of more than one office or employment.

The CHAIRMAN: Then you dealt with them as if each one was the only one?

Mr. IRWIN: Yes.

The CHAIRMAN: I mean you do not total them.

Mr. IRWIN: That is correct. He cannot have the full exemption in respect of each of them.

The CHAIRMAN: How would it work out if supposing you had two death benefits—let us assume one was \$5,000 and the other was \$15,000—from different sources? How would you apply the provisions of this amendment to that situation?

Mr. IRWIN: This involves an interpretation of the words; I would rather refer it to the national revenue people here.

Mr. POOK: I am not clear on the example you gave. The exemption is \$10,000.

The CHAIRMAN: Let us put them, one at \$3,000 and the other at \$5,000.

Mr. POOK: Those are the death benefits?

The CHAIRMAN: Yes, from two different sources.

Mr. POOK: If the employee's remuneration came from two different sources the exemption is proportioned in proportion to the amount of salary he got from his employers. The proportion of the \$10,000 is allowed.

The CHAIRMAN: Of course there are so many factors that you would have to put down in order to operate the formula, I can see the difficulty in that.

Mr. HARMER: To make it nice and simple, if the income from each employer was \$5,000 in the last year of employment, they would add to \$10,000, and then he got a death benefit from each one of \$6,000, it would be that \$5,000 exemption against each \$6,000 death benefit.

The CHAIRMAN: That is all in subsection (1). Shall the subsection carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Subsection (2).

Shall it carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Subsection (3), is to repeal the section 139 (1) (az). Are we concerned about that repeal Mr. Irwin?

Mr. IRWIN: This repeals the definition of income from a source. This is being dealt with in a new section.

The CHAIRMAN: Shall the subsection carry?



Hon. SENATORS: Agreed.

The CHAIRMAN: Subsection (4) of section 33. This has so many complicated references in it I wonder if you can tell us in a few words what it is intended to do?

Mr. IRWIN: It merely adds the underlined words. This particular subsection of section 139 provides a definition of the expression "tax payable under Part I," or "tax payable under Part II," and it is necessary to add this reference to Part IIC.

The CHAIRMAN: Now we come to a section that requires some discussion, subsection (5) of section 33 which purports to amend section 139. There is no question but that this revision is for the purpose of dealing with the decision in the Interprovincial Pipeline case. Is that right?

Mr. IRWIN: That is right.

Senator BRUNT: That is admitted. That is what it is about.

The CHAIRMAN: The principle involved, as I understand it, is that the effect of rewriting this definition is so as to be able to attribute to income received from abroad or from another country expenses which were actually incurred in Canada.

Mr. IRWIN: Yes, the Income Tax Act provides a number of deductions in computing income. It is sometimes necessary to compute income from a particular source or from a particular activity and this is intended to make clear that amounts which are deducted in computing income may be allocated or used in computing income from a particular activity or source.

The CHAIRMAN: That is a generalization, but if we look at this in the light of the Interprovincial Pipeline case I think we can get a clearer understanding of what you are doing because in the Interprovincial Pipeline case the company borrowed money in Canada and it had a liability to pay interest on the bonds that were issued in Canada. Is that not right?

Mr. IRWIN: I believe so.

The CHAIRMAN: And they established a subsidiary company in the United States to construct and hold the part of the pipe line that was constructed in the United States, and the Canadian company lent money to the American company and charged interest on that loan, and the American company bought treasury bills in the United States and received income from that source.

Now, if this subsection (5) were law in relation to those facts then the Interprovincial Pipeline would have got no credit for the withholding tax withheld by the United States on the interest that was paid to the Canadian company for the money loaned to the American company. Is that right?

Mr. HARMER: Yes, sir.

The CHAIRMAN: I find something difficult in that principle to accept. The Canadian company borrows money in Canada and there is an obligation to pay interest, so that is a deductible charge of the Canadian company. The Canadian company turns around and puts that money to work in the United States and earns income on that money in the United States. Income comes to it in Canada but less a withholding tax in the other country. What you are in effect saying here is that that interest paid in Canada on the money that was borrowed in Canada and loaned to the American company is a deductible charge or, as the language in this definition says, "It may be reasonably regarded as wholly applicable to that source." In other words, you are saying that the interest paid in Canada may reasonably be regarded as being applicable to the interest received from the United States, and since it was at least equal to that amount there was no income from the United States, even if the United States collected a withholding tax.



Mr. IRWIN: Yes, sir, for Canadian tax purposes there is no income from the United States. The costs of earning the income are equal to the income.

The CHAIRMAN: What I am trying to figure out is where is this going to stop. The Interprovincial case happened to involve interest but it could involve promotional expenses in Canada. I could conceive that it might even involve indirect charges.

Senator BRUNT: We will just have to wait and see.

The CHAIRMAN: What is the view of the department in presenting this amendment as to the scope of the words "such deductions as may reasonably be regarded as wholly applicable to that source"? What is the intended scope of that in that allocation?

Mr. HARMER: What ever is reasonable in the circumstances.

Senator BRUNT: It will be all-embracing.

Senator LAMBERT: Discretionary authority is introduced?

Mr. HARMER: No, this is something we have to take a view on and then we have to be prepared to support it in the courts and if the courts say that we were unreasonable in allocating certain expenses to certain income then we cannot make the assessment stick.

The CHAIRMAN: Let us test that reasonableness on the facts of the Interprovincial Pipeline case in the allocation of the interest paid in Canada against the interest earned in the United States. Let us bring forward a reasonable man in those circumstances.

Mr. HARMER: To us, sir, it seems eminently reasonable to say that if a company has no money of its own and has to go out and borrow money which it invests some place else, it is surely reasonable to say the interest it pays on what it borrows should be offset against the interest it receives on the investment of that borrowed money.

Senator BRUNT: Without regard to the tax it has to pay on the interest it received?

Mr. HARMER: The tax is the result of this. If, in fact, by having made what we think is a reasonable allocation it turns out there is no net income coming into Canada and therefore no Canadian tax payable, then we do not see why we should allow a foreign tax against the Canadian tax on some other kind of income when in fact we get no tax on the income taxed in the United States.

The CHAIRMAN: Let us say I borrowed the money to put it to work and I happened to put it to work in the United States and it cost me something there to put it to work, and when you say my cost of the money in Canada is going to be deducted from the earnings of that money in the United States but I am not going to be allowed the cost that I am subjected to in the United States in the use of that money there, then I am puzzled. That is the thing that puzzles me.

Senator BRUNT: There is this further fact that I think should be looked at. Because of this subsidiary company in the United States which operates a pipe line, the overall profit is increased.

The CHAIRMAN: That's right. The pipe line would be inoperable, I would think.

Senator BRUNT: They have to operate certain facilities in Superior, Wisconsin, but the overall profit is increased and our taxing authorities are quite happy to tax the increase on the profit. You want the best of everything.

Mr. IRWIN: No, the dividends would come back tax free.

The CHAIRMAN: Yes.

Senator LAMBERT: Does this taxing provision apply now to only one case?

Senator BRUNT: Only one case has come up so far.

Senator LAMBERT: That is the reason for it? It is a net being spread at the sight of the bird that you want to catch.

The CHAIRMAN: No, you can't catch this bird. This was in 1950-54 and the case went through the courts and the Supreme Court of Canada held that the withholding tax was a proper deduction. Now, you have a change in the law inspired by the Interprovincial Pipeline case but this would be applicable to any such case which would occur in the future. They cannot go back and undo the Interprovincial Pipeline case.

Senator LAMBERT: No, but as a matter of fact there is no other corporation to which this clause would apply at the moment?

The CHAIRMAN: I don't know. It could very well be.

Senator BRUNT: It doesn't have to be a pipe line company.

The CHAIRMAN: No. This would apply in any case where you borrowed money in Canada and used it for the purpose of earning income in the United States.

Senator BRUNT: That's right.

The CHAIRMAN: And I am sure there are lots of those cases.

Senator LAMBERT: With respect to the Interprovincial Pipeline Company the money was not borrowed from the people of Canada except for a very small percentage of it. You know that because you will remember the bill coming through here.

The CHAIRMAN: Yes.

Senator LAMBERT: It seems to me that when you use the income tax law of Canada—it isn't the first time it has been done—to introduce clauses that are applicable to one particular case and not to a broad number, you are coming fairly close to *ex parte* deliberation and concentration. I wonder if it does not have some reaction on the development of the country, that is all. This particular corporation certainly had a great deal to do with the development of the natural resources of Alberta.

Mr. HARMER: Senator, the intention is certainly not to limit the application of this amendment to one company or even to all companies doing business outside the country. It has very wide application in many instances. In any case, where you have to determine income from a source either from Canada or abroad or income from a particular business, or anything like that.

Senator LAMBERT: The effect of such taxation can reach a point where it can discourage any further development of that kind. That is the point I am trying to bring out.

Senator BRUNT: I come back to the other point. I realize dividends paid by the parent company may be taxable, but I maintain that because that pipe line is in the United States, profits of the Canadian company are increasing.

The CHAIRMAN: Oh, yes.

Senator BRUNT: Regardless of dividends coming from the United States or not, you tax those increased profits.

Senator McKEEN: On the other hand, when that money from the company goes to Canadian shareholders it is taxed.

The CHAIRMAN: Yes.

Senator LEONARD: Is there any infringement on the reciprocity treaty?

The CHAIRMAN: At the moment I am concerned with the U.S.-Canadian tax convention. This is something that marks a change in our income tax law

and therefore a change in relation to the basis on which our U.S.-Canadian tax convention was entered into. Now, the thing I am not prepared to say is, I doubt if it stultifies the convention; but if you started to apply the convention you might have to apply it on the basis of the law as it was when the convention was entered into, rather than this amendment. If you want to have the amendment within the scope of the convention you would have to have a supplementary convention.

Senator LEONARD: What does Mr. Irwin say?

Mr. IRWIN: Mr. Chairman, I do not think this interferes with our convention. I might add we don't regard this as a change in law but rather as putting down in words what we thought the law always provided.

The CHAIRMAN: Yes, except that the court said that it didn't.

Mr. IRWIN: Yes.

The CHAIRMAN: So that we have to proceed by the income tax of Canada which is part of that tax convention and is based on a state of law, not what you thought it was, but what the court said it was.

Senator BRUNT: Have any studies been made of the convention with respect to tying in this amendment? Has anybody really looked at the convention?

Mr. IRWIN: We do not think that it will affect the convention adversely. For example, Article 15 of the convention says, "As far as may be in accordance with the provisions of the Income Tax Act, Canada agrees to allow a tax credit", and so on.

The CHAIRMAN: That is the act as it was at the time.

Senator BRUNT: At the time.

The CHAIRMAN: Yes, not in relation to any change.

Senator BRUNT: Surely that would be interpreted as applying to the act as it existed at that time?

Mr. IRWIN: Not in this case.

Senator BRUNT: And according to the courts this company was entitled to the 15 per cent tax deduction which was made.

Mr. IRWIN: No, sir. When we want to, if you will, freeze a provision of the Income Tax Act as it stands at the time of the agreement, the agreement must say so.

The CHAIRMAN: The point is that where the convention is at variance with the Income Tax Act as it exists, the convention governs?

Mr. IRWIN: Oh, yes.

The CHAIRMAN: Well, if you make subsequent changes, are you suggesting that they apply to the convention? That is not the thing that bothers me as much as this factor. For instance, if you have a Canadian company that carries on branch operations in the States, and elsewhere, I can see a variety of fields where you may find expenses attributable on this formula to the U.S. branch operations that are not the type of expense that can enter into the calculation of U.S. tax for the purposes of the operations there, and I am going to get a burden of tax greater than the sum total of the taxes should be with the credits that I should get. I am thinking of indirect expenses, and the convention covers indirect expenses, and both countries recognize those things. With branch operations from Toronto and the United States, or some other country, you might find a portion of head office expense attributable to the branch operations in the States greater than what the company thinks is proper and greater than what they can charge against those operations in the States, and yet that would only be applied for the purposes of the formula, and if instead



of branch operations it happens to be a subsidiary company I can see all kinds of difficulties, both convention-wise and in relation to the extent to which this new doctrine may be applied in attributing expenses to a certain source of income—I can see all kinds of problems; and my interest is not an interest of saying “No”, my interest is one of trying to simplify it.

Senator ASELTINE: I think we should pass it and see what happens.

The CHAIRMAN: Oh, well, of course, if we are going to just adopt the principle of passing a measure to see what happens we do not need to sit here for three hours.

Senator BRUNT: I think the present section with regard to associated companies is going to lead to all kinds of trouble.

Senator LAMBERT: Is it not true that in the case of the interprovincial corporation the subsidiary companies are represented in different States through which that line was obligated to pass when they were going to build the line, to incorporate a company with a separate subsidiary company in Michigan and—

The CHAIRMAN: No. They used the Delaware company, and it went through all the different States from Wisconsin right down to Sarnia.

Senator LAMBERT: Is it one separate corporation?

The CHAIRMAN: One separate corporation.

Senator LAMBERT: The point I want to make is that that interprovincial line would never have been built when it was if it had not been for the projecting of it through the western States to Port Huron.

The CHAIRMAN: No, the cost would have been too great.

Senator LAMBERT: Well, I know that, and the capitalization was borne pretty largely by the United States; but from the point of view of developing an industry in Alberta and bringing whatever benefit there has been from that province, building the line through those States, which now gives distributing facilities to certain American consumers, was an essential feature of it. I am not complaining about getting revenue, if it is possible to do so, but my purpose is to check on future developments of that kind, because I think that is the important aspect of this.

The CHAIRMAN: I can understand the application of this section to interest, as in the interprovincial pipe line situation, and possibly the theory was that my cost in money should be tied in to the income that I received from its use, and certainly that would be a sound principle if the whole operation was in Canada. The only thing that complicates it is because I borrowed the money in Canada and incurred a cost, and then I used the money in the States and earned some revenue, but also incurred some costs. Now, I am not getting the full cost of the money against the income in the sense that I am not getting any benefit from the withholding tax in the States. That is the only element there. The deduction is clear—it is interest—but when I am faced with a sentence which says “such deductions as may reasonably be regarded as wholly applicable”, then I do not know what that is.

Senator BRUNT: Where do we end up?

The CHAIRMAN: I do not know. When it is interest I understand, but when it is made to be such as can be reasonably regarded then I—

Senator LEONARD: Mr. Chairman, is it clear that the taxpayer's income is from a source outside of Canada?

The CHAIRMAN: When it says “in a particular place” that may be in any place.

Senator LEONARD: What does Mr. Irwin say?

Mr. HARMER: The section is not limited to taxpayers having income from outside Canada.

Senator LEONARD: It applies to a Canadian taxpayer's income from sources within or without Canada?

Mr. HARMER: Yes.

Senator LEONARD: Then, it goes very much further than the Income Tax Resolution, does it not?

Senator BRUNT: Has somebody a copy of the resolution?

The CHAIRMAN: It is on the opposite page.

Senator LEONARD: The resolution says: "...and in computing income from sources outside Canada...".

Mr. HARMER: Yes "...for the purpose of calculating the foreign tax credit...".

Senator LEONARD: Have you a rule with respect to foreign income sources without Canada?

The CHAIRMAN: I feel dissatisfied with the section because I cannot put any boundaries on it. It does go further than the budget resolution which we have had time to consider. "From a particular place" may mean any place within or without Canada.

Senator BRUNT: Mr. Chairman, in the resolution it says the rules must specify the deductions. There is no specifying of the deductions.

Senator LEONARD: It is confined to two classes, the income of a non-resident person from a business or employment in Canada, and in computing income from sources outside of Canada for the purpose of calculating foreign tax credits allowed to a person resident in Canada, but as to a taxpayer in Canada a resolution deals only with the computing of income from sources outside of Canada for the purpose of computing tax.

The CHAIRMAN: My suggestion on this is that we should stand this section for further discussion.

Senator BRUNT: I agree. We have this other one to come back to, in any event.

The CHAIRMAN: Shall we go back to section 18?

Senator BRUNT: No, let it stand. It is now one o'clock.

The CHAIRMAN: Then, we will stand subsection (1) of section 18, and subsections (5) and (6) of section 33 for further discussion. Do I have the usual motion to print 800 copies of the proceedings in English and 200 copies in French?

Senator BRUNT: I so move.

The CHAIRMAN: All the sections except subsection (1) of section 18, and subsections (5) and (6) of section 33 have been carried.

Senator LEONARD: And subsection (5) of section 18 should stand also.

The CHAIRMAN: Yes, we are standing subsections (1) and (5) of section 18, and subsections (5) and (6) of section 33. All the others have been carried.

Senator BRUNT: When we come back we will limit the discussion to those four subsections.

The CHAIRMAN: Yes. The Committee can now rise and report progress.

Whereupon the meeting was adjourned.

















Third Session—Twenty-fourth Parliament  
1960

# THE SENATE OF CANADA

## PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

# BANKING AND COMMERCE

To whom was referred the Bill C-68, An Act to amend the  
Income Tax Act.

---

The Honourable **SALTER A. HAYDEN**, *Chairman*

LIBRARY

JUL 18 1960

UNIVERSITY OF TORONTO

---

WEDNESDAY, JULY 6, 1960

No. 2

---

### WITNESSES:

Mr. E. R. Irwin, Director, Taxation Division, Department of Finance;  
Mr. J. F. Harmer, Assistant Director, Assessment Branch, Mr. D. R.  
Pook, Chief Technical Officer and Mr. E. S. MacLatchy, Assistant  
Director, Legal Division, of the Department of National Revenue.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1960

THE STANDING COMMITTEE ON  
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Gershaw	Paterson
Baird	Golding	Pouliot
Beaubien	Gouin	Power
Bois	Haig	Pratt
Bouffard	Hardy	Quinn
Brunt	Hayden	Reid
Burchill	Horner	Robertson
Campbell	Howard	Roebuck
Connolly	Hugessen	Taylor
(Ottawa West)	Isnor	(Norfolk)
Crerar	Kinley	Thorvaldson
Croll	Lambert	Turgeon
Davies	Leonard	Vaillancourt
Dessureault	*Macdonald	Vien
Emerson	McDonald	Wall
Euler	McKeen	White
Farquhar	McLean	Wilson
Farris	Monette	Woodrow—50.

---

\**Ex officio member.*

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate.

WEDNESDAY, June 29, 1960.

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Pearson, for second reading of the Bill C-68, intituled: "An Act to amend the Income Tax Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Buchanan, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

WEDNESDAY, July 6, 1960.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

*Present:* The Honourable Senators: Hayden, *Chairman*; Aseltine, Bouffard, Brunt, Dessureault, Farquhar, Golding, Haig, Horner, McDonald, Pratt, Wall and White—14.

*In attendance:* Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel, the Senate, and the Official Reporters of the Senate.

Consideration of Bill C-68, An Act to amend the Income Tax Act, was resumed.

Mr. E. R. Irwin, Director, Taxation Division, Department of Finance, Mr. J. F. Harmer, Assistant Director, Assessment Branch, Mr. D. R. Pook, Chief Technical Officer and Mr. E. S. MacLatchy, Assistant Director, Legal Division, of the Department of National Revenue were again heard in explanation of the Bill.

Clauses 18, 24 and 33 were again allowed to stand.

At 11.00 a.m. the Committee adjourned to the call of the Chairman.

Attest.

A. Fortier,  
*Clerk of the Committee.*



## THE SENATE

### STANDING COMMITTEE ON BANKING AND COMMERCE

OTTAWA, Wednesday, July 6, 1960

#### EVIDENCE

The Standing Committee on Banking and Commerce, to whom was referred Bill C-68, an Act to amend the Income Tax Act, met this day at 10 a.m.

Senator Hayden in the Chair.

The CHAIRMAN: Gentlemen, we have a quorum. The first item is to continue our consideration of the amendments to the Income Tax Act. If you recall last time we stood two sections, namely, Sections 18 and 33, and with relation to section 33, particularly subsection (5) of the bill.

Just to refresh your memories from last time, when we were dealing with section 18, you will recall that this is the old matter of recapture of depreciation or capital cost allowance in the case of a trustee and where a trustee is holding appreciable property, that is, property against which they can annually make a write-off, and he is transferring that property to a beneficiary, then this amending section says that that transfer shall be deemed to be a sale at the then market price. Now, that market price may be higher than the present depreciated cost of the property. Therefore, the principle of recapture of the excess depreciation that has been allowed would enter into it. The question I asked last time was, "Well, who is going to be assessed for the amount of the recapture?" I think the suggestion by the departmental representatives was that they would look to the trustee. At this stage I think some example was asked, and the thing seemed to get in a state of uncertainty, so we stood the section until today.

Senator BOUFFARD: Mr. Chairman, before we go to the question of recapture, it may be that I do not understand the section at all, but my feeling is that the trustee when he gets the income of the property or when he gets the depreciation gets it as the representative of the estate or of the beneficiary. Why should there be recapture when he gives that property back to the owner? As a matter of fact, the owner does not change on account of the fact that the trustee manages the property. He does so, and he holds the property in his hands, but for the beneficiary. The owner is already the beneficiary. Why should the remittance of the property to the beneficiary be considered as a sale? He is giving the property back to the owners.

The CHAIRMAN: The only explanation that I have heard in any direction, and not necessarily here, has been this, that the question of value of the property at the time it is being transferred by the trustee to the beneficiaries has always been a matter of some concern, and that is why you have them saying in this proposed amendment, "shall be deemed to be a sale". If it were a sale they would not have to say that.

Senator BOUFFARD: As a matter of fact, it is not a sale at all; it is only a remittance of the property to the beneficiary.

The CHAIRMAN: That is right.



Senator BOUFFARD: And if it had been depreciated, it seems to me there would be no recapture. The property is sold by the owners to somebody else.

The CHAIRMAN: Perhaps I should point out in that connection that there is already in the statute a provision in relation to the capital cost allowance that may be taken each year during the period that the trustee is holding the property, and that provision is that the beneficiaries to the extent of their share of the income they received in a year for which capital cost allowance is taken are entitled to deduct their share of that capital cost allowance from the amount that they received, and their income is that much less; so the beneficiary actually gets the benefit of that capital cost allowance in each year.

Senator BOUFFARD: A company which has a property that is depreciated keeps the depreciation?

The CHAIRMAN: Yes.

Senator BOUFFARD: All the time, until it sells the property, and the price would be higher than the depreciated property, and the recapture takes place. But it seems to me there is no recapture at all of the property. It is really sold by the real owners to somebody else, and then they get the benefit.

The CHAIRMAN: I think the only explanation of why they are attempting to do this at this stage is that it enables you to terminate your dealings with the department in dealing with the estate at a much earlier time. No one can foresee in the future when the property is actually going to be sold. Of course, I am only explaining. We have the representatives here. As soon as we get clear of the questions which the committee may have to ask I will call on the departmental representatives.

Senator ASELTINE: Why would not the property vest in the beneficiary as of the date of death under the will?

Senator BRUNT: In some cases it does, and in others it does not, depending on the wording of the will.

The CHAIRMAN: That is right. We have proceedings in Ontario by which, first of all, if the will requires you to hold the property with a life tenant's interest, and then over to the ultimate beneficiary, that is sufficient; otherwise the property would vest within a certain length of time unless certain other things were done as required by our law in Ontario.

Senator BOUFFARD: Just the same, it is the property of the beneficiary in the end, and it has been the property of the beneficiary from the time that it was vested into a trust until it comes back to those who held the property.

The CHAIRMAN: Are you ready to hear the explanation?

Senator BRUNT: I would like to have the explanation why they ask some one to be liable for this who has no financial interest in it at all. The fellow who has the benefit of the depreciation or the capital cost allowance has no obligation at all here.

The CHAIRMAN: That is right. The question I want to leave for their consideration is that since the beneficiaries are the ones who get the benefit of the annual capital cost allowance as taken from their income that year, it seems to me the beneficiaries are the ones who have to bear their share of the amount of the recapture in that year.

Senator BRUNT: I think the experts would go along and agree.

The CHAIRMAN: I don't know. We will ask them. Mr. Irwin, do you lead the discussion on this?

**F. R. Irwin, Director, Taxation Division, Department of Finance:** I would like to make a very short comment, Mr. Chairman. In reviewing this part of the law it became obvious that there was an anomaly or a leak in this part of the system. The Income Tax Act, as the chairman has explained, provides that when depreciable property comes into the hands of a trust or an estate, the trust or estate is entitled to claim capital cost allowance based on the fair market value of the property. If the trustee sells the property to replace it with more productive property or if he sells the property and distributes cash to the beneficiary, there is recapture of the capital cost allowances. However, if he distributes the property after having held it and claiming capital cost allowances for a number of years there will not be any recapture or terminal loss as the law stands at present. This may result in property which has been set up in the books of the trustee at fair market value and being written down through capital cost allowances then being transferred to a beneficiary, who again starts to depreciate it all over again at the fair market value. It seemed reasonable and proper that there should be some recapture of capital cost allowances, or a terminal loss if applicable, at this point.

**Senator BOUFFARD:** I cannot understand why the transfer of the property to the beneficiary is not made as depreciated, because the trustee has depreciated the property before the beneficiary. There is no reason why the beneficiary should start all over again to depreciate it, because it has not depreciated during the time the trustee had it.

**The CHAIRMAN:** Well, I do not think, Senator, under the law as it stands, that having regard to the relationship that exists the transfer would be permitted at more than the depreciated capital cost.

**Senator BOUFFARD:** I do not think so. It was depreciated for the beneficiary, and if he does remit to the beneficiary after that he is remitting property that has already been depreciated.

**Mr. IRWIN:** This point was very carefully considered while we were studying this section before making recommendations to the Minister. There was this suggestion that the beneficiary be permitted to start his capital cost allowance only at the written down value as it stood in the hands of the trustee or the estate.

**Senator BOUFFARD:** That is right.

**Mr. IRWIN:** This was examined very carefully, and the officials came to the conclusion that they could not recommend this because it would leave the way open to those who might want to use a trust for the purpose of avoiding the tax.

**Senator BRUNT:** I can see where the department would lose out. For instance, if you had a property which at the time of the probating of the will was worth \$100,000 and which was depreciated down to \$50,000, and then it is transferred to a beneficiary at, we will say, \$50,000, who then depreciates it down to \$40,000, and then settles it at \$60,000, all he pays is on \$10,000, and nobody pays on the \$50,000 that has been written off previously. I do not think you can ask the trustee to pay on it. He never had any beneficial interest in it. He never got anything out of the property.

**The CHAIRMAN:** I was interested in Mr. Irwin's statement as to why the department could not look favourably on that suggestion. He said it might open the way for some avoidance of tax. In all the years I have been sitting here as chairman of this committee when the income tax amendments have come before it I venture to say that we get the same explanation each year, that it is for the purpose of closing a loophole. Loopholes are always going to be with us, and some of the amendments to the Income Tax Act are directed towards closing those loopholes, but that should not be a paramount consideration. If

you run into trouble and if you think there is revenue escaping which you should have, then it is very easy to put in a provision. I do not think there are insufficient words in the English language to cover what you want to cover, although I must say I become concerned when I see the length of some of these sections.

Senator BOUFFARD: It seems to me that case collection is not a valid reason for imposing a tax which may be onerous to the beneficiary and the trustee. The trustee has not anything to pay, and why should a tax be imposed on the beneficiary?

The CHAIRMAN: It simply means that the trustee would retain it. Now, as to whether in his duties as trustee he would be permitted to is another matter, but the tendency for him would be to let that capital cost allowance accumulate because of the possibility of having to repay it on recapture. He may have many troubles under the will and under the law in banking this money as against the incidence of taxation years ahead, which may or may not happen.

Senator BOUFFARD: He may have to keep the property for four years or until he is sure it will not be assessed. An assessment can be made four years after.

Senator WHITE: Could I ask the witness a question? When he speaks about the value of property in section 18 is that value the same amount as what is accepted for dominion succession duties?

The CHAIRMAN: Not necessarily. This means the value at the time of sale.

Senator WHITE: Why? Does not the beneficiary take the property for depreciation purposes at the—

The CHAIRMAN: The department does not seem to be concerned about that. It seems to be concerned about what the value of the property is at the time of death.

Senator WHITE: If when the man dies the property is worth \$50,000—

The CHAIRMAN: At the date of death?

Senator WHITE: Yes—would not the depreciation be on \$50,000?

Senator BRUNT: No, because the property may have gone up.

The CHAIRMAN: He cannot appraise and take depreciation on the increased appraisal value.

Mr. HARMER: I think the answer to Senator White's question is that the trustee gets depreciation on the same value as is used for purposes of estate tax, and that is the fair market value at the date of death of the testator. Then Senator Brunt pointed out that several years may elapse before that property is handed over to the beneficiary who is ultimately entitled to it, and it is the fair market value of the property at the time that distribution is made which becomes the base for the depreciation in the hands of that beneficiary, and that may be more or less than the value at the date of death.

Senator WHITE: Do you mean if a property is worth \$50,000 and the man dies and the property is not transferred for ten years for various reasons and is then worth \$100,000, there is a recapture of something between \$50,000 and \$100,000?

Mr. HARMER: No, we never recapture more than has been allowed to the trustee. If he only depreciated on the basis of \$50,000 and wrote it down to \$25,000, then \$25,000 would be the maximum that could be recaptured.

Senator WHITE: Irrespective of whether it is over \$100,000, you would only recapture between \$25,000 and \$50,000?

The CHAIRMAN: The maximum recapture is the amount of depreciation which has been written off.



Senator BRUNT: You cannot get any more than that.

Mr. HARMER: Notwithstanding that fact the beneficiary who ultimately gets it can start at \$100,000 and depreciate it from there on on that basis, and if he sells it then it is subject to recapture of the amount of capital cost allowance.

Senator WHITE: Suppose it is just transferred to the beneficiary, and he has it appraised at \$100,000 and starts to depreciate from that figure—or does he have to start with figure the \$50,000?

Mr. HARMER: What the law presently says, senator, is that it is the fair market value. Whether it is the same amount on an appraisal depends on whether we agree with the appraiser, but it is whatever the fair market value is. It starts off at that figure.

Senator EULER: May I ask this: Supposing the department recaptures to the extent of, say, \$25,000, just exactly how does that then affect the tax?

The CHAIRMAN: It is taken into income in that year.

Senator EULER: In the one year?

The CHAIRMAN: No, it can be spread over.

Senator BRUNT: Yes, whichever is the more beneficial to the taxpayer.

The CHAIRMAN: Yes, that is up to the taxpayer.

Senator BRUNT: But why do you not take it from the beneficiary when he gets the property? He is the fellow who should be paying it.

Mr. IRWIN: Mr. Chairman, this suggestion was also considered carefully when we looked at this matter. The problem here is that the person who received the benefit of the capital cost allowance while the property was being held in trust or in an estate may be a life tenant who may have died by the time the property is transferred.

Senator HAIG: I would like to ask the witness a question, Mr. Chairman. Suppose I own a property which was worth \$100,000 up until a few years ago. I was allowed depreciation at 5 per cent each year, and I depreciated it for ten years which gave me \$50,000 off, and then I die? The property was depreciated down to \$50,000, but it was still worth \$100,000. Do you tax that \$50,000 against the other fellow? Who gets taxed on that?

The CHAIRMAN: Nobody.

Senator HAIG: I cannot put it in as a deduction from my taxable income.

The CHAIRMAN: If you have enjoyed the benefit of it. This \$100,000 property you have, even though in your hands it stands at only \$50,000, at the time you became an estate, for succession duties purposes it is valued at its fair market value on the date on which you die.

Senator HAIG: At \$100,000.

The CHAIRMAN: That is right.

Senator HAIG: Well, let me give a little illustration. I know of a block of property which is worth \$100,000, that was 20 years ago, and for a certain number of years 5 per cent per year was deducted as depreciation off the value of that property, that is depreciation was taken off the taxable income and income tax was paid on the balance of the revenue. Well, about five years ago you amended the law and said I could take the 5 per cent off but when I sold the property if I received a price more than the depreciated value as it stood at that time I had to pay income tax on the increase, and I was taxed for that amount. The result was that all owners of property dropped the depreciation allowance; they did not want to take it because later they would find that they were in trouble. Now, does a situation like that enter here?



The CHAIRMAN: You mean that when you are in a rising market you should not take capital cost allowances?

Senator HAIG: There would have to be a gamble taken on that.

The CHAIRMAN: You might as well take them because if you sell more than one property you might be deemed to be in the business. But that is not what we are considering here. What we are considering here is the point where you leave this transaction, when the property is in your state, and at some stage after it is in your estate it is about to be transferred from the trustee to a beneficiary, and what this amendment says is that at that moment that property shall be deemed to have been sold, that the transfer shall be deemed to be a sale at the then fair market value. Now, if there is a difference and a gain, or a difference and a loss, between the then fair market value when the property is being transferred to the beneficiary, then to the extent that capital cost allowances have been taken in the meantime, they are recapturable and become subject to tax under this amendment.

Senator ASELTINE: In whose hands?

The CHAIRMAN: We are not arguing the principle as to whether it should or should not be, all we are saying here is that it is unfair to put the burden on the trustee, that it should be on the beneficiary. That is all we are saying.

Senator McDONALD: Mr. Chairman, I think that is right, and I would like to relate a personal experience along that line: I am a trustee of an estate, and I have not taken a cent out of that in any way, it has been a labour of love for me. Why then, should I be called upon to pay that amount?

Mr. IRWIN: May I continue, Mr. Chairman. I think the point you were making, Senator Brunt, points up the fact that the present law may be too generous in allowing capital cost allowances to a trustee or a beneficiary when that property may ultimately go to that beneficiary or to another beneficiary, and be subject to capital cost allowances all over again. However, that is a feature of the law which has existed for a number of years, but it did seem to us that so long as capital cost allowance was allowed to an estate or trust this particular amendment put forward here was necessary.

The CHAIRMAN: Yes, that is true, but one feature of the law at the present time is that the beneficiary can enjoy the annual capital cost allowances to the extent that he shares in the income of the estate in that year. Now, when the beneficiary receives the property, and there may be a burden of taxation by reason of recapture, why shouldn't the beneficiary be the one—he got the benefit—to take the burden? Why pick on the trustee? He may not even have the resources necessary to pay the tax.

Senator BRUNT: Do you realize, Mr. Irwin, that there are literally thousands of trustees and executors in the same position as Senator McDonald just described throughout Canada that do this job and never charge a cent. They never get a cent in compensation in any way, and here you are going to put this burden on them.

Mr. MACLATCHY: It would not be a personal liability.

Mr. IRWIN: They are only liable in their capacity as trustee. There would be no personal liability.

The CHAIRMAN: I am not so sure, and for this reason: I do not know what departmental attitude might be taken in the future, since this is what the law says, that there is an obligation on the trustee to provide in relation to it.

Senator BRUNT: Suppose the trustee said, "I have no money". Are you going to forget about it? Well, that has not been my experience in dealing with the department.

The CHAIRMAN: We have Mr. Harmer here who is pretty close to that end and it may be that he will tell us what the attitude might be.

Senator BRUNT: I agree with this principle but I think you are having the wrong person bear the burden.

Senator EULER: We should certainly know whether the trustee becomes personally liable or not. That is very important.

The CHAIRMAN: I do not know how you are going to settle that here this morning. There seems to be a difference of opinion as between Mr. Irwin and Mr. MacLatchy. There are circumstances under which a trustee even in administering a trust may be personally liable. How this will be extended or dealt with in the future I do not know but I do say there is a possibility.

Mr. MACLATCHY: Mr. Chairman, may I point out one thing. In the present law, in section 63, subsection (8)—that is the subsection whereby a beneficiary may be allowed capital cost allowances, that capital cost allowance is only allowed to a beneficiary if the trustee sees fit to allow it to him. So, if the trustee does not want to get in the situation you are contemplating the trustee can refuse to allocate capital cost allowance to the beneficiary.

The CHAIRMAN: Mr. MacLatchy, you are talking from the point of view of the administration of the Income Tax Act alone, and there may be provisions in the will, or there may be provisions in the general law in the province in which he lives which would not permit him to retain monies that come in by way of income—he may have an obligation to pay them out. Now, which one would govern, the provisions of the Income Tax Act which says he does not have to allow the benefit of the capital cost allowances to the beneficiary, or the requirements of the will?

Senator BOUFFARD: The beneficiary would be taxed on income that would be retained by the trustee.

The CHAIRMAN: Yes.

Senator BOUFFARD: He would not receive any benefit but he would be taxed on it.

Mr. MACLATCHY: My point is that no one need claim capital cost allowance and, if so, no one will be subject to the provisions of this subsection. The trustee himself might be taxable because the income is accumulating in his hands and he may or may not claim capital cost allowances. If he claims it this provision may operate against him. He may permit the beneficiary, who is probably a life beneficiary, to take the allowance as he, the trustee, sees fit, but having granted it he lays himself open to the operation of this provision.

The CHAIRMAN: You are doing one of two things. You are either forcing the trustee into a position where he won't claim capital cost allowance to preserve himself from liability in the future, or you are simply saying that if you want to make use of the capital cost provision then you are going to take the liability as part of it as well. As I understand it we were not quarrelling with that principle, all we said was that we think you are pinning the badge on the wrong person, we thought you should pin the badge on the beneficiary.

Senator BRUNT: Mr. MacLatchy, look at the position of a trustee who does not take it, and the property at the time of death is valued at \$100,000 and when it is turned over to the beneficiary its fair market value is \$25,000. No capital cost allowance has been taken and no allowance has been made to the beneficiary. He would certainly sue the trustee, and why shouldn't he?

The CHAIRMAN: The trustee would be on a spot then.

Senator BRUNT: He would be in an untenable position.

Senator McDONALD: Without funds.

The CHAIRMAN: Without funds, and a very good sense of being liable because of this faulty administration.

Senator BRUNT: And you could not give him any money back because he had not taken any capital cost allowance. I can see what you are trying to do and I approve of it but let us make the right person responsible and not a stranger, for that is what you are doing here.

Senator WHITE: Senator Brunt asked a question a moment ago and I do not think it was answered. Take a case where a trustee or executor is liable and there are no funds in his hands. What would the departmental witness say to that? What will his department do?

The CHAIRMAN: Mr. MacLatchy is the one who should answer that question.

Senator WHITE: It can easily happen in dozens of cases. What would happen?

The CHAIRMAN: What would you say in that case, Mr. MacLatchy?

Mr. MACLATCHY: I think under certain circumstances the tax would probably be uncollectable. If the will provides for the property to be distributed in such a way that the trustee has no choice in the matter and no funds left, then collection of the tax is probably unenforceable. He is only liable to the extent of the trust property. But, of course, if he ever distributes property without getting an income tax clearance, then, of course, he can become personally liable.

Senator WHITE: Then the trustee can be personally liable. You said a moment ago that he was only liable in his capacity as trustee, but not personally so. There are cases, then, where he would be personally liable?

Mr. HARMER: Yes.

Senator WHITE: Between the Estate Tax Act we had before and this Act you are putting the executor in an impossible position. You will only find trust companies acting as executors.

The CHAIRMAN: I was going to throw out a suggestion for discussion. I think there should be some addition to this section of language which would say that in these circumstances the beneficiary shall add his proportionate share of the recapture to his income for the year.

Mr. HARMER: Which beneficiary do you mean?

The CHAIRMAN: The beneficiary who has received the benefit.

Senator BRUNT: That's right.

The CHAIRMAN: The benefit of the allowances.

Mr. HARMER: There may have been several beneficiaries who have benefited over the years.

The CHAIRMAN: We have to assume they may leave estates.

Senator BRUNT: Why load everything on to a trustee just because it is a little more difficult to collect it from the people who should actually pay it? That is what you are asking us to do.

Mr. HARMER: I don't think this amendment is doing this. It is held to be on the trustee by this subsection (8) of section 63 which Mr. MacLatchy referred to which says that the beneficiaries may deduct such part of the capital cost allowance otherwise available to the trust as the trustee may designate, and this goes on to say he shall "... for the purpose of section 20" which is the recapture section, "be deemed to have been allowed to the trust or estate under those regulations in computing its income for the year."

This is already in the law, that the estate shall be deemed to have taken the allowances even though it has passed them on to the beneficiaries, and this amendment is really just an enlargement of that but it does not change the principle of it.



The CHAIRMAN: It does not change the principle of it but what it says is that the minuses appear as well as the pluses.

Mr. HARMER: This present law has always operated in the case of a sale the same way as we are proposing that the amendment make it part except in the distribution.

Senator BRUNT: If the trustee sells the property, then the money comes into his hands and it is available and he straightens it all out.

The CHAIRMAN: We are only dealing with this case where you deem something to be a sale, and I am suggesting that in those circumstances, to the extent a beneficiary has any choice of the benefit of the capital cost allowance, a proportionate share of any recapture shall be added to his income for that year.

Senator BRUNT: That's right.

Senator BOUFFARD: Even so, Mr. Chairman, if I am thinking right, suppose the property has been bequeathed to a man of 21 years of age without trust because he can administer the property because he is of age, he can get his capital cost allowance and he will keep that until he sells the property; but if the property is bequeathed to a minor, of, say, 10 years of age, and has given the property to be administered by trust on account of the fact the child is not in a position to do it, and he does administer the property until the child is 21 years of age, when the child becomes 21 the property goes back to him. At that time, on account of the fact he was a minor child, he cannot keep depreciating the property but he has to pay the recapture. I think it is awful.

The CHAIRMAN: That is the fact.

Senator BOUFFARD: Yes.

Senator BRUNT: Look what can happen. Take the case of Senator McDonald. Suppose he passed away tomorrow. Mr. MacLachy is his executor. He carries on Senator McDonald's estate and it is not wound up and his property is not transferred over, then Mr. MacLachy passes on in three years. Then you have Mr. Irwin come in. You could have half a dozen estates tied up because it would not be safe to disburse the assets and wind up because you wouldn't know if you were going to be liable.

Senator BOUFFARD: The trustee will not transfer the property and it could go on for a number of years. So the beneficiary will own the property and will not be able to administer it properly because he will not have possession of it.

The CHAIRMAN: Could I say this, Mr. Irwin and Mr. MacLachy? It would appear to me that there is an opinion in the committee that the section in the form in which it is does not operate fairly. The suggestion which I have made might improve it but in the light of the example which Senator Bouffard gave, even there you could have hardship in the case of a minor where the property to which he was entitled when he became twenty-one was being administered by a trustee for ten years, and then the minor when he became twenty-one was entitled to receive the property, the property had depreciated in value, and he could be saddled with a very substantial amount of taxable income by way of recapture.

Have you anything to say or suggest in the light of the discussion in relation to this section, whether we should amend it or strike it out? Incidentally, there is no problem about affecting the revenue here because this is something that cannot possibly have been reckoned into ways and means. As chairman I am not concerned about that particular question at all.

Mr. IRWIN: Might I report the objections of the committee to the Minister of Finance pointing out that it is the request of the committee that he recon-



sider this section in the light of what has been said here and report to the committee again? I realize this may hold up the proceedings of the committee.

The CHAIRMAN: That is all right.

Senator BRUNT: That is quite all right.

The CHAIRMAN: Well, then, if that is satisfactory the section will stand and we will move on to section 24. We dealt with it the last day but it appears that it is not as simple as it seems. Section 24 is to be found on page 17 of the bill. Subsection (3) is the application section and says that these amendments shall be applicable to the 1960 and subsequent taxation years.

The problem that arises is this. Is the section limited in its application to acquisitions of property in 1960 and thereafter or is the application of this section made so broad that any acquisition of property which occurred in the year earlier than 1960 and which did not meet the requirements for entitlement of benefit under this amendment which is now being proposed—would they be got under the application of the section in 1960 and subsequent years? For instance, let us assume that in 1958 a successor company acquired property which is the subject matter of this section for a consideration which was not exclusively shares of the successor company. If this amendment had been in force then such a transaction would not have gained the benefits of the section.

Now we come down to 1960, and this section has become law. Does it cover not only the acquisition of property after the section becomes law, or does it cover any earlier acquisition of property which is not in accordance with what the amendment says for the taxation years after the section comes into force?

Now I think it is capable of being applied to both. If that is so, the department should tell us what they are aiming at in this section. Is it their intention to try to catch both. Are you ready for that, Mr. Irwin?

Mr. IRWIN: Mr. Chairman, the purpose of this amendment is to make certain that the law provides clear authority for what has been past administrative practice. Some taxpayers have suggested that the existing words do not support the present administrative practice, and this amendment is designed to remove this uncertainty.

After this bill became public the very question that is being raised here was raised by some persons as to whether the amendment might have an adverse effect on future deductions by companies which had acquired property in the past. This matter was reviewed very carefully, and in view of the fact that the amendment merely ensures the continuation of past administrative practice, it was concluded that the company with property acquired in the past would not be adversely affected.

Senator BRUNT: Let us put some words there that would leave no doubt.

The CHAIRMAN: Just a minute. Mr. Irwin has stated this clearly, but there is a subtle ring in what he says. He has said that the departmental practice up to this moment has been in accordance with what this amendment provides; and therefore, when the amendment becomes law the departmental practice would continue to be the same. Therefore he was able to say that in those circumstances no person who made a transaction earlier would be adversely affected, the answer being that the practice had already caught him.

Mr. IRWIN: That was not my meaning or intention, sir. After quite a careful review it was thought that an amendment to make it extra certain that property acquired in the past would not be adversely affected, was not necessary.

Senator BRUNT: Is there any harm in making it very clear, so there will be no argument about it in the future?

The CHAIRMAN: I think your suggestion was, Senator Brunt, let us bring it to a head. If we said in subsection 3: this section is applicable to the acquisition of property in the year 1960 and subsequent taxation years, would that be satisfactory?

Senator BRUNT: I think we should go further—the acquisition of property as of June 6, 1960, because June 6 was the date on which this bill received first reading came to the attention of the public.

Mr. IRWIN: I know the Minister is very anxious that this particular amendment have no retroactive effect; and since I have been empowered to refer another section to him, would the committee permit me to draw this suggestion to his attention as well?

Senator BRUNT: Yes.

The CHAIRMAN: Could I add this for your consideration and submission to the minister? In this amended section as it is now drawn, if you have what is called a predecessor company, and that company in the course of its operations has borrowed money and has carried on operations on its properties with borrowed money, then sells out its property to a successor company for "X" shares of the successor company and the assumption by the successor company of the liabilities of the predecessor company, as I read this amending section, the moment you add any consideration other than shares—and the assumption of liability would be an additional consideration—you are out of the benefit of the section. Is that your view of it and is that what was intended?

Senator WALL: That is what it says.

Mr. IRWIN: If I understand your example correctly it was and is intended that the consideration may not include liabilities of the acquired company—at least, the liabilities of the acquired company assumed may not be any greater than is matched by the current assets acquired.

The CHAIRMAN: I accept that explanation, but I suggest that the section in the form in which it is would exclude the assumption of any liabilities by a successor company; and if it is intended only to exclude borrowed money secured by bonds, debentures, etc., then let us exclude that; because I cannot conceive of a company not having some current liabilities at some stage and what you are saying is that company would have to sell its assets for shares of the successor company and would have to retain all its liabilities itself. It might not be able to do that because some of the liabilities might form a charge on the property.

Senator BRUNT: And might not be payable.

The CHAIRMAN: Not immediately. So that if it is intended to get at the element of bond or debenture issues, then let us say that is excluded. Frankly, that is what you are attempting to get at. But do not draw it in terms that are so broad that every time someone wishes to do a transaction he must come and see Mr. MacLachy and say: "Will you please give us a letter in these circumstances saying that we may do this". It would be easier to do it in the statute.

When you talk about the possible retroactive application of the provision, would you also discuss the question of liabilities so that we shall not be putting in there something that will make it almost impossible to carry out a transaction.

Senator BOUFFARD: Why not talk about current liabilities? A company always has current liabilities.

The CHAIRMAN: Mr. Irwin has said it is intended to get at the debt structure which is secured by debentures or bonds.



The only other section that we studied was section 33, subsection 5, which appears on page 23.

Senator BRUNT: That is the one that went beyond the budget resolution.

The CHAIRMAN: Yes. Now, are you in a position to give more information in relation to subsection 5, particularly the first question asked why subsection 5 of section 33 is broader in its application than the wording of the budget resolution?

Mr. IRWIN: The budget resolutions are merely notices of amendments. We have never provided resolutions for every amendment that appears in the bill; nor have the resolutions attempted to spell out in complete detail what would appear in the amendment. I think many of the resolutions are much briefer than this one and do not cover all the words that appear in the amendment.

The CHAIRMAN: That is not the question, Mr. Irwin. The point is that in the budget resolution the amendment proposed was in relation to computing the income from a non-resident person from a business or employment in in Canada, and in computing income from sources outside of Canada for the purpose of calculating foreign tax credit allowed to a person resident in Canada. Now the way the amendment is drawn, it deals with income from sources in a particular place without reference to territory, whether Canadian or foreign, and I can see in the amendment, as a matter of law and legal interpretation, that it could deal with sources of income in Alberta, Ontario and Prince Edward Island, and in relation to each one you could determine deductions that are properly to be made against income in the locality only, and if there is a loss in one area you would not let him pit it against profit in another area. I cannot conceive that the section as drafted would go that far, neither can I conceive that they intended that.

Mr. IRWIN: The law does not impose a tax on income from a province.

The CHAIRMAN: Well, if I were giving the A, B, C's of it, I would say there is an individual operating in Canada, a part of whose business operations are in the province of Alberta, a part in the province of Ontario, and a part in the province of Prince Edward Island. I could read into this amended section which you propose an interpretation which would enable you to apply deductions locally in those areas against those operations, and the overall I would not be able to pool income and expenses.

Senator BRUNT: Why not limit this to the budget resolutions? Why broaden it? The budget resolution related to one particular class.

The CHAIRMAN: On the last occasion and again today we have pretty well indicated our difficulties, and since Mr. Irwin and those who are with him will be discussing the matter with the minister I think they should discuss our difficulties under this subsection as well.

Mr. IRWIN: We as officials are surprised at the difficulty that this seems to give rise to. We find it a difficult amendment to explain, but it was intended to provide law for what has been administrative practice in the past and to express in words what the officials, at least, thought the law to be before the Interprovincial Pipelines bill.

The CHAIRMAN: The difficulty is that so long as it is departmental practice, then only those of us who are senators and who may be lawyers, or identified with business that comes in contact with your departmental experience, would know what the departmental practice is. Now, it comes before us in the form of legislation; that is what we are looking at, and we are not reflecting on what may have been your departmental practice, but there are two things that bother us: one is the broadening of the scope as against the budget resolution; the

other is the language of the section itself, when you talk about deductions as may reasonably be regarded as wholly applicable to that source or sources of income. To me, that is a generalization.

Senator WALL: The resolution says these deductions were to be specified, and that is no specification.

The CHAIRMAN: Well, it speaks of the rules for determination. I thought a rule was supposed to be a guide. It certainly is not to me at this stage, and I cannot follow it. I notice the minister in the Commons said that it was pretty simple and straightforward in its language. Well, if it is, possibly he would explain it to us. So would you bring that to his attention?

Senator BRUNT: Possibly some slight amendment is needed.

The CHAIRMAN: There may be some slight amendment. I am not ready to suggest what it should be at the moment.

Senator EULER: Since the official has heard the objections and difficulties, why not let him consult with the minister and come back here?

The CHAIRMAN: Yes. Shall we stand section 33, then?

Senator BRUNT: And it is understood that section 24 now stands?

The CHAIRMAN: Yes, section 24 stands, and section 18 stands.

I am sorry we cannot go further, Mr. Irwin.

—Whereupon the committee adjourned.







Third Session—Twenty-fourth Parliament  
1960

# THE SENATE OF CANADA

## PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

# BANKING AND COMMERCE

To whom was referred the Bill C-68, An Act to amend the  
Income Tax Act.

---

The Honourable SALTER A. HAYDEN, *Chairman*

---

WEDNESDAY, JULY 13, 1960

No. 3

---

### WITNESSES:

Mr. E. R. Irwin, Director, Taxation Division, Department of Finance;  
Mr. J. F. Harmer, Assistant Director, Assessment Branch, Mr. D. R.  
Pook, Chief Technical Officer and Mr. A. L. De Wolf, Solicitor of the  
Department of National Revenue.

### REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1960

THE STANDING COMMITTEE ON  
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor ( <i>Norfolk</i> )
Connolly ( <i>Ottawa West</i> )	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

---

\**Ex officio member.*

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate.

WEDNESDAY, June 29, 1960.

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Pearson, for second reading of the Bill C-68, intituled: "An Act to amend the Income Tax Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Buchanan, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL.

*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

WEDNESDAY, July 13th, 1960.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

*Present:* The Honourable Senators: Hayden, *Chairman*; Aseltine, Bouffard, Brunt, Burchill, Campbell, Crerar, Croll, Dessureault, Golding, Horner, Hugessen, Isnor, Lambert, Leonard, McDonald, McKeen, Pouliot, Power, Pratt, Roebuck, Thorvaldson, Wall, White and Woodrow—25.

*In attendance:* Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Consideration of Bill C-68, An Act to amend the Income Tax Act was resumed.

Mr. E. R. Irwin, Director, Taxation Division, Department of Finance, Mr. J. F. Harmer, Assistant Director, Assessment Branch, Mr. D. R. Pook, Chief Technical Officer and Mr. A. L. De Wolf, Solicitor, of the Department of National Revenue, were again heard in explanation of clauses 18, 24 and 33 of the Bill.

After discussion it was resolved to report the Bill with the following amendments:—

1. *Page 14:* Strike out subclause (1) of clause 18 and renumber subclauses (2) to (4) inclusive of clause 18 as subclauses (1) to (3) inclusive respectively.

2. *Page 15:* Strike out lines 19 to 22 inclusive and substitute therefor the following:—“(4) This section is applicable to the 1960 and subsequent taxation years.”

3. *Page 17:* Strike out subclause (2) of clause 24 and renumber subclause (3) of clause 24 as subclause (2).

Attest.

A. Fortier,  
*Clerk of the Committee.*

WEDNESDAY, July 13th, 1960

The standing Committee on Banking and Commerce to whom was referred the Bill (C-68), intituled: “An Act to amend the Income Tax Act”, have in obedience to the order of reference of June 29th, 1960, examined the said Bill and now report the same with the following amendments:—

1. *Page 14:* Strike out subclause (1) of clause 18 and renumber subclause (2) to (4) inclusive of clause 18 as subclauses (1) to (3) inclusive respectively.

2. Page 15: Strike out lines 19 to 22 inclusive and substitute therefor the following:—"(4) This section is applicable to the 1960 and subsequent taxation years."

3. Page 17: Strike out subclause (2) of clause 24 and renumber subclause (3) of clause 24 as subclause (2).

All which is respectfully submitted.

SALTER A. HAYDEN,  
*Chairman.*

## THE SENATE

### STANDING COMMITTEE ON BANKING AND COMMERCE

#### EVIDENCE

OTTAWA, Wednesday, July 13, 1960.

The Standing Committee on Banking and Commerce, to which was referred Bill C-68, an Act to amend the Income Tax Act, met this day at 10 a.m.

Senator SALTER A. HAYDEN in the Chair.

The CHAIRMAN: Gentlemen, we have a quorum and we will proceed to deal with the several sections of the Income Tax Bill, C-68, which have been standing for a week now—that is, clauses 18, 24 and 33.

Mr. Irwin, Mr. Harmer and Mr. Pook, will you come forward again, please.

The first of these clauses is No. 18. We stood this the last time, Mr. Irwin, so that you might confer with the minister because there was some indication from this committee of the necessity for some change. Have you anything to report as the result of your conference with the minister?

Mr. IRWIN: Yes, Mr. Chairman. As directed by this committee on Wednesday, July 6, I have reported to the Minister of Finance the concern expressed by members of the committee in connection with subclause (1) of clause 18 which deals with depreciable property distributed by a trust or estate.

The Minister of Finance has instructed me to report that he has carefully re-examined this subclause of the bill in the light of the concern expressed by a number of honourable senators and that he now proposes to withdraw subclause (1) of clause 18 so that it may receive further study. Accordingly, the Minister of Finance requests the committee to move the following amendment.

The CHAIRMAN: The amendment reads as follows:

Clause 18.

That Bill C-68, An Act to amend the Income Tax Act, be amended

- (a) by striking out subclause (1) of clause 18 thereof and renumbering subclauses (2) to (4) of clause 18 thereof as subclauses (1) to (3), respectively; and
- (b) by striking out lines 19 to 22 on page 15 thereof and substituting therefor the following:
  - (4) This section is applicable to the 1960 and subsequent taxation years.

It means deleting all reference to the first clause of section 18 which deals with proceeds of disposition in the hands of a trustee where a transfer of property by the trustee to the beneficiary was going to be deemed to be a sale at the then market value.

Senator BOUFFARD: I move the adoption of the amendment.

Senator BRUNT: I second the motion.

—Carried.



The CHAIRMAN: The next section, Mr. Irwin, was section 24, and that section stood for the same purpose because of the discussion which took place here and the indication that some change might have to be made in the wording. Have you anything to report?

Mr. IRWIN: As directed by this committee on Wednesday, July 6, I have reported to the Minister of Finance the suggestion of some honourable senators that an amendment should be made to clause 24 to ensure that subclause (2) thereof, which adds the word "exclusively" in two places, should apply only to property acquired after June 6, 1960.

I have also reported to the Minister of Finance the observations of the Chairman of the Committee that the effect of this subclause may be to change the law so that it will stand in the way of many transactions in the future where the company to be acquired has liabilities other than bonds or debentures.

Both these points raised by honourable senators have been carefully considered by the Minister of Finance. I am instructed to report that in view of the fact that the only purpose of the proposed amendment was to clarify the law in accordance with past administrative practice and in view of the fact that some concern has been expressed that its effects may go beyond this purpose the Minister of Finance now proposes to withdraw the subclause. Accordingly, the Minister of Finance requests the committee to move the following amendment.

The CHAIRMAN: The amendment reads:

Clause 24.

The Bill C-68, An Act to amend the Income Tax Act, be amended by striking out subclause (2) of clause 24 thereof and renumbering subclause (3) of clause 24 thereof as subclause (2).

Senator CAMPBELL: I move the amendment.

Senator McKEEN: I second the motion.

—Carried.

The CHAIRMAN: Now we come to Clause 33. For good measure, Mr. Irwin, you will recall that the last time when you were here you were going to be talking to the minister in any event, and I suggested that you might discuss with him the concern of the Chairman, among others, in relation to subparagraph 5 of section 33 of the bill, to be found on page 23. Have you anything to report?

Mr. IRWIN: In accordance with the direction of this committee I also reported to the Minister of Finance the fact that some honourable senators were troubled by the wording and scope of subclause (5) of clause 33 which adds a new definition of income from a source or a particular place.

The Minister of Finance has carefully reviewed the observations and expressions of concern of various honourable senators in connection with this subclause and has directed me to ask your permission to make a statement on his behalf by way of further explanation of the purpose and intent of this new definition.

This subsection provides a new definition of income from a particular source and income from a particular place. The revised definition serves two purposes. Firstly, the old provision is not at all clear as to how one determines business income from a particular country if the business operates branches in more than one country. For this reason the definition is divided into two parts or paragraphs. (a) of the proposed new subsection (1a) tells how to determine income from a particular source in the sense of a business or employment being a single source regardless of its geographical scope. Then paragraph (b)

provides for dividing up, geographically, the income from a business or employment if the business or employment is carried on in more than one place. This geographical division has no significance if the business or employment is wholly within one country. Therefore, it has no real significance except for the purposes of (1) determining the income in Canada of a non-resident person and (2) determining the income of a resident of Canada from sources in another country for purposes of foreign tax credit.

Although, theoretically, paragraph (b) might be used to determine a person's income for each Canadian province, those figures would have no significance for purposes of the Income Tax Act. They would always have to be added together again and any loss in one province deducted from the profits in others in order to arrive at income for the purposes of the Act. The division of taxable income for purposes of Federal-Provincial fiscal arrangements is made on an entirely different basis authorized by sections 33 and 40 of the Income Tax Act.

The second purpose of the amendment is to ensure that all amounts deductible in computing income must be deducted in computing the income from one or more of the sources on a reasonable basis. The question of what is a reasonable basis is usually one upon which taxpayers and the Department of National Revenue can agree but, in some few cases, it may have to be settled by the courts.

Under the old definition, the Supreme Court of Canada held that interest was a statutory deduction that could not be said to be "related" to a particular source of income. The effect of the new provisions is that all such statutory deductions (with a few exceptions listed in paragraph (1b) that obviously have no connection with earning income) must be allocated on a reasonable basis. Thus, if it can be shown that borrowed money was used to earn income from a particular source or a particular country, the interest paid on that borrowing must be deducted in computing income from that source or place.

This new definition must, unfortunately, be lengthy and somewhat complicated. After very careful study I have come to the conclusion that I cannot propose any amendment to this part of the bill.

I hope that honourable senators will see their way clear to accept this part of the bill in its present form.

The CHAIRMAN: Seeing that I led some of the discussion on this, may I indicate my viewpoint. I was concerned that this section would permit the isolation of sources of income and the deductions within Canada and in different areas of Canada. I do not claim originality for the idea because I think Mr. Justice Locke, in the Interprovincial Pipe Line case, had suggested something of the same sort, although his comment was *obiter* inasmuch as it did not go to the substance of the judgment.

He felt there was provision then existing in the law which would prevent the consolidation of profits and losses and the overall determination of income within Canada.

What has been done here is to remove the section he referred to, which was 139 (1) (a) (z), which is repealed by this bill, and that is the one referred to when we were having this discussion, and to re-enact it substantially as (a) of 1 (a) in subsection 5, except for the last four or five lines which deal with the manner of determining deductions.

I appreciate the minister's statement indicating that the effect of the amendments is such that it is not intended to apply to Canadian operations, although theoretically it could.

I was wondering whether Mr. Irwin would turn over the page and go to page 24, where you have section 1 (b). If it is not intended to deal with a number of operations in Canada and the isolation of income and deductions in relation to those, then in 1 (b), at the top of page 24, it would be simple to accomplish the purpose in this way. Instead of saying, "in applying" subsection 1 (a) for the purpose of sections 31 and 41, you could say that subsection 1 (a) shall apply. Sections 31 and 41 are the two sections that deal with a Canadian who has foreign sources of income and a foreigner who has Canadian sources of income and if instead of the language reading as it does you said that subsection 1 (a) shall apply for the purpose of sections 31 and 41, and then carry on, the purpose would be served. Simply say it shall apply.

Senator ASELTINE: What is the difference?

The CHAIRMAN: I think there is a difference. I should like to be told by some expert lawyers that there is no difference, but I think there is.

Senator CROLL: "shall apply"?

The CHAIRMAN: Simply say that subsection 1 (a) shall apply.

Senator CROLL: Instead of saying, "in applying"?

The CHAIRMAN: Yes.

Senator CROLL: Instead of giving them the right to apply?

The CHAIRMAN: In giving the right to apply, you do not limit its application; it has as broad an application as the language will permit. It is true we have the minister's statement that it is not intended—

Senator BOUFFARD: The statement of the minister will not be added to the law.

The CHAIRMAN: The only effect of a statement of a minister to a parliamentary committee is to direct the committee. I would find it difficult to say that a minister could afterwards go back on an undertaking.

Senator BOUFFARD: He is not the one who will go back. It is not the same department that applies the law as the one that makes it.

The CHAIRMAN: No; the administration is in the Department of National Revenue.

Senator BOUFFARD: If they feel they are bound by section 5 and if they interpret section 5 as they claim it should be interpreted, they could very easily divide the sources of income in Canada.

The CHAIRMAN: I agree. There is a good deal of law which states that any statement made as to intention or meaning is not binding on subsequent action if the law permits it.

Senator CROLL: You have there what he has said and we could go along with that. It has been my experience that the statements of a minister have always had face value and indeed real value before this committee. It has been so as long as I can remember. If as in this instance he has indicated his purpose, then in deference to the minister, and in the light of his co-operation, I think we ought to accept it and go along with him. There will be other years to correct the situation if it needs correction.

The CHAIRMAN: In part, the problem at this time of the year, when we are getting close to the end of the session, may be the difficulty of being able to sit down calmly and choose language that will do what you want it to do and not other things. I thought that possibly that shift in words in 1 (b) might give statutory reality to the minister's statement.

Senator CROLL: That is a real shift you are suggesting.



Senator BRUNT: There is no doubt that it would clarify the meaning of it.

The CHAIRMAN: Have you anything to say on that, Mr. Irwin, or do your instructions go only as far as the minister's statement?

Mr. IRWIN: Only as far as the minister's statement, sir. I would not even like to make a comment on your suggested amendment on such short notice.

The CHAIRMAN: Since you are here as a source of information as to the section, and the purpose of the amendments, I should think that you would be in a position to tell us whether you think that change in language would defeat the purpose of this section.

Senator CAMPBELL: Could you not so word it that subsection 1(a) should apply?

The CHAIRMAN: To 31 and 41?

Senator CAMPBELL: Yes; 31 and 41.

The CHAIRMAN: The minister's statement does not contemplate the broader application of section 139 than its application in relation to sources of income of a Canadian abroad and sources of income in Canada of a foreigner. Isn't that correct, Mr. Irwin?

Mr. IRWIN: I am sorry, sir, I did not quite get the question.

The CHAIRMAN: The minister's statement that you have just read contemplates that the purpose of subsection 5 of section 33 is to deal with sources of income of a Canadian abroad and the allocation of deductions for taxation purposes, and sources of income in Canada of a foreigner.

Mr. IRWIN: It is true that the minister's statement stresses the two purposes you have just outlined, but there are other uses to which this amendment might be put.

The CHAIRMAN: That is what I am afraid of. Can you illustrate?

Mr. HARMER: Perhaps I could, Mr. Chairman.

The CHAIRMAN: Will you please do so.

Mr. HARMER: One of the purposes to which it could be put which would affect the taxpayer whose operations were wholly in Canada would be in determining, for instance, how much income he receives from rented property, which as the committee may remember we discussed the other day as being a source of earned income, rather than invested income. If he borrowed money and used it, or it was reasonable to assume that he had used it, for the purpose of acquiring property which he then rented to others, this amended section enables us to say that some part or the whole of the interest, if it is reasonable, on that borrowed money should be deducted in determining how much the net income from the rented property was. This would then be used only for the purpose of determining how much surtax he would pay.

Senator BRUNT: Instead of allocating all the invested income you take part of it and charge it against earned income.

Mr. HARMER: Because it was borrowed to put into rented property.

The CHAIRMAN: If it is earned income the problem of surtax does not arise.

Mr. HARMER: Yes, Mr. Chairman, I think it does indirectly. If income is arrived at by process of deduction you start with income and deduct whatever the earned income is and whatever is left is invested income. Therefore it is material to know how much earned income you have in order to arrive at the resulting net income.

Senator BRUNT: Have you not got that now?

Mr. HARMER: Some doubt was cast on it by the Interprovincial Pipe Line decision, but such cases had nothing to do with this problem. What was said



by the Supreme Court in that case, however, led us to doubt whether we did have the right, which we had assumed we had, to do this sort of thing, and that is why we did not wish to make the amendment applicable only to sections 31 and 41.

Senator BRUNT: In the Interprovincial Pipe Line case this was never argued before the Supreme Court of Canada and they expressed no opinion on it.

Mr. HARMER: That is true, but the Department of Justice suggested that what they had said in regard to that particular case they could equally say in regard to the other case.

Senator BRUNT: It is *obiter dictum*, then.

Senator CROLL: The Department of Justice has doubts sometimes.

Senator LEONARD: In the case you illustrate, the case of money borrowed for rental income, does that come under subclause (a) or subclause (b)?

Mr. HARMER: (a).

Senator LEONARD: Is not (b) intended only to cover cases of income of a non-resident or income of Canadian residents from abroad? In other words, is not (b) confined to 31 and 41?

Mr. HARMER: I think that is right, senator.

Senator LEONARD: In that case it would be in order to consider an amendment to make that clear because the minister's statement does say that is the intention of subclause (b). Perhaps wording such as the chairman suggests could be put in—that it shall apply for the purposes of 31 and 41.

The CHAIRMAN: That would be completely in line with the minister's statement.

Mr. HARMER: I do not think I would care to jump at an amendment.

Senator ASELTINE: We can accept the minister's statement. I have been here a long time and have never known any decisions to be made to the contrary.

The CHAIRMAN: I am not suggesting that we should not accept it; I am simply pointing out that in my opinion it should not be a standard practice here, because we could in that case give up the business of considering bills and merely have statements. That is not the way the country is run, and courts do not interpret statements. You could not even put it in evidence.

Senator BRUNT: Would Mr. Irvin take it up with the minister again? We are not going to get home very quickly and we shall have ample time to clear it up.

The CHAIRMAN: There are one or two other things I wish to make a passing reference to. I believe the witness said the other day and he has repeated it today, that subsection (b) is the one that deals with foreign sources of income, or income in Canada of foreigners, and that subsection (b) is really the section that was proposed to meet the Interprovincial Pipe Line case. Subsection (a) in substance is really just a shifting of section 39, 1 (a) (z) with the appropriate expansion of deductions into (a) and 1 (a).

In the ordinary way I would propose an amendment, that in 1 (b) we say what I have indicated, but in the light of what Mr. Harmer says, this language may be broader in its applications, and if it is I certainly do not want to get a half-baked amendment. Being broader, it might open the door to things that I do not contemplate at the present moment and I do not want that either.

I was wondering if the committee would agree that we accept the minister's statement as to intent and purpose, but that we ask him to put the

section into the bill again next year when we shall have another look at it in the light of the experience afforded by one year's operation. In other words, take another general look at it again, and on that basis accept it now.

Senator CROLL: That is agreeable.

The CHAIRMAN: I do not think there would be any difficulty about the minister's accepting that.

Mr. IRWIN: This was very carefully re-examined and I can only state that all representations for changes and suggestions for amendments are carefully considered by the minister each year, and if this is found to be defective in any way I know that he will examine it again.

Senator BRUNT: Did you say "effective" or defective?"

Mr. IRWIN: If it is found to be defective—

Senator BRUNT: Will you explain what you mean by "defective"?

Mr. IRWIN: I do not think it is defective, but I say that if, as in any part of the Income Tax law, there is need for amendment, it is certainly reviewed each year. Now, the minister has studied this very carefully, and I can only draw attention to his statement that he hopes honourable senators will pass it in its present form. I can only state my personal view, but I am sure that if in the light of experience it does develop that it requires an amendment then that will be forthcoming.

Hon. Mr. BRUNT: There will be no chance of getting it into next year's bill unless the minister decides to amend this section again.

The CHAIRMAN: The feeling I have as chairman—and, of course, it does not have to be your feeling—is that if we get a request from a responsible minister and a statement such as has been made then as much as I feel it should be clarified I do not feel I can press it, but I would not want to press that upon this committee.

Senator HUGESSEN: Mr. Chairman, it seems to me that the minister has met us more than half way, and I would be willing to accept that.

Senator LEONARD: I would, too, Mr. Chairman.

The CHAIRMAN: Of course, this will be in the Hansard report of the committee, but I was wondering whether there is any thought that the minister's statement in relation to this should be incorporated in our report.

Senator BOUFFARD: I think so.

Senator BRUNT: Yes, very definitely.

Senator ASELTINE: It will be in the printed report.

The CHAIRMAN: I mean in the report that the committee will make to the Senate. I do not think in the circumstances you need it.

Senator BRUNT: I thought you were referring to the Hansard report.

The CHAIRMAN: No. In the light of everything that has been said shall section 33 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Now, there is something else that was not reserved the last time, but Mr. Harmer said to me that on a previous occasion we stood two sections, and when we came back to talk about them the representatives from the department discovered that there were three, and now there may be one or two more things to refer to. I talked to Mr. MacLachy about one of them. I do not think it requires an amendment at this time, but it is something that maybe they should be prepared to deal with next year. It is in

section 11 which we have passed which deals with the question of controlled companies. It now establishes control by voting control, and there is a saving clause to that section on the next page in relation to banks when they loan money to companies and want closer supervision of the loan, when they will move in and take voting control until the loan is paid off. That is expected under this provision with respect to associated companies. However, there is another type of situation which I mentioned to Mr. MacLatchy, and that is the case of a trustee who maybe administering a number of estates and in the course of the administration he may have the controlling share interest in a number of companies and, therefore, on a strict interpretation of section 11, all those companies are associated companies.

Senator BRUNT: And only one of them can have the benefit of the low rate on the first \$25,000.

The CHAIRMAN: I should report the whole of the conversation. Mr. MacLatchy called me back and told me that there is a problem of drafting at this time of the year to cover that situation. I wonder whether the committee would accept the statement that it was not the intention to cover such a situation? At this stage of the year, and in view of the fact that it is a question which will certainly be brought forcibly to the attention of the minister, I think the acceptance of a statement of that kind would be sufficient for our purposes.

Senator BRUNT: I wonder what the attitude of the department is going to be, and I speak not of the Department of Finance but of the Department of National Revenue, if they run into a situation where the National Trust, for instance, is a trustee and executor and is controlling four entirely different companies and four entirely different beneficiaries?

The CHAIRMAN: There are two sides to the question, I think. The difficulty is not to tie yourself down so as not to be able to distinguish between a *bona fide* case of a trustee and a number of these companies, and a situation which is created, and a trusteeship which is established, just to take advantage of this.

Senator BRUNT: I would expect no relief to be given in the latter case.

The CHAIRMAN: That is why any drafting would require careful consideration. Have you anything to say with respect to that?

Mr. IRWIN: I think Mr. De Wolf will answer that.

Mr. DE WOLF: I have nothing further to say except when you have two or more trusts with a common trustee, and two or more sets of beneficiaries, we would consider the trusts to be different persons, and we would not consider the companies, when there are two or more companies involved as being associated corporations.

Senator THORVALDSON: I think the courts would uphold that.

The CHAIRMAN: I am not so sure that I would accept your law on that, senator, but I am prepared to accept the statement for administration purposes at this time. What does the committee say about that?

Senator BRUNT: I am quite prepared to accept the statement.

Senator POWER: I would like to make just one statement. I do not understand this at all—

The CHAIRMAN: Is that your statement?

Senator POWER: This is with all deference to your great knowledge, and all respect to the minister, but I do not think we should accept here as law a statement of a minister as to what he intends to do, nor the statement of a civil



servant. If we are here to make laws then let us make the laws which can be interpreted in the way we intend them to be interpreted. I have lost all faith in the infallibility of any minister. I was one too long myself.

The CHAIRMAN: As I understand what was said on this section, we have an indication from the department as to its proposed application of it. Now, either that is acceptable to the committee or it is not. If the committee is prepared to accept that statement as to the application as satisfactory, then that is fine; otherwise it is open to you to deal with it as you will. What is the wish of the committee?

Senator CROLL: Mr. Chairman, I move the adoption of the bill. That will bring it to a head.

The CHAIRMAN: There is one other item to discuss before you do that. Are we through with section 11 now?

Hon. SENATORS: Agreed.

The CHAIRMAN: There is one other item to which I want to direct your attention, Mr. Irwin, and that is to section 15 on page 13. Section 15 is a new section which establishes the four-year limitation period in relation to a nil assessment, as well as an assessment. In other words, for some period, in view of the *Okalta* case, it was held that a nil assessment was not an assessment and, therefore, the four-year period did not run. Subsection (2) on page 13 of section 15 is intended to take out of the provisions of this section any case where an appeal is now pending. I think the language is clear. It says:

"This section is applicable in respect of any notice of an original assessment or notification described in subsection (4) of section 46 of the said act as enacted by this section, whether mailed before or after the day this section came into force, except that nothing in this section shall be construed as rendering invalid any reassessment or additional assessment made before that day."

Then, In subsection (2) of section 32 on page 21, Mr. Irwin, where you make your exception, you use the words "any such assessment" instead of using the words "any reassessment or additional assessment". Having a very suspicious mind when I see a change in language I wonder if it is intentional, or not.

Mr. IRWIN: Mr. Chairman, this is the first time this difference in wording has been drawn to our attention, but the intention in each case was the same, that is, that the amendment would not adversely affect an appeal that was instituted before the amendment came into force.

The CHAIRMAN: What I am concerned about is this situation: I know of one appeal which is pending and it is an appeal from a reassessment. The issue is whether the reassessment was made within four years or whether the time has gone by. Now in the wording in section 32, (12b), reads:

"Where any notice of an assessment has been sent by the Minister as required by this Act, the assessment shall be deemed to have been made on the day of mailing of the notice of the assessment."

That is the new law. Before it was the original assessment. I think in this case evidence was led to show the actual assessment was made several days before it was mailed out but this is to cure that possibility for the future. They make an exception in the next paragraph, section 32 (2).

"Subsection (12b) of section 136 of the said Act as enacted by this section is applicable in respect of any assessment whether made before or after the coming into force of this section, except where an appeal from any such assessment was instituted before the coming into force of this section."



What I am concerned about is that when they say, "any such assessment", are they referring back to an assessment mentioned a couple of lines earlier or is it from any reassessment or additional assessment. Here the intention of the department does not matter too much because the court will be called on to settle the issue. If there is any possibility of there being a difference, and since the department did not intend any difference, I think the language should make it clear.

Senator BOUFFARD: The practice is at the present time, in a few pending cases, after the notice of an appeal has been sent to the department the minister thinks he has the right to reassess after the notice of appeal has been given, whether it is before or after the expiry of the four years.

The CHAIRMAN: That is not the situation here. The situation here is that if you did not have this last subclause (2) in section 32, then, when this bill becomes law, the pending cases would be resolved because the date would be the date of mailing. Now, this is intended to preserve the situation in regard to pending appeals, and one of them I happen to know has been argued, and stands for judgment. We should not provide for an exception, and remember this exception I think was put in during second reading of the bill in the House of Commons to take care of these cases and to avoid, shall I use that naughty word, retroactive effect.

Do you have any objection to using the words "from any reassessment or additional assessment"?

Mr. HARMER: Mr. Chairman, is it the word assessment in line 26 or in line 28 that you are referring to?

The CHAIRMAN: In line 28.

Mr. HARMER: It seems to me that the one in line 28 just refers back to the one in line 26, and 26 makes the section applicable to certain assessments, and the exception uses the same terms, and so if the section is not applicable then you would not have to make an exception.

The CHAIRMAN: But the situation I have in mind is that there was an assessment and there subsequently was a reassessment and the appeal is from the reassessment.

Now I am a little concerned that in subsection (2) a court may say that this does not cover the situation and that you are put out of court the moment this section becomes law.

Mr. HARMER: But when the same word is used twice in the same section wouldn't it be taken to mean the same thing in both cases?

The CHAIRMAN: That is what I am afraid of. I think it would be taken as meaning an assessment.

Mr. HARMER: If that were the case I would think that subsection (2) could be said to be not applicable to the assessment at all.

Senator ASELTINE: Is not a reassessment an assessment?

The CHAIRMAN: Ordinarily it is, but you could use language that would indicate you are just talking about an assessment.

What is the feeling of the committee on this?

Senator BRUNT: Would it create any embarrassment if we were to make a change to make it clear?

Senator HUGESSEN: Is the word "assessment" defined in the act?

Mr. IRWIN: Yes, by definition assessment includes a reassessment.

Senator THORVALDSON: That clears up the whole point then.

The CHAIRMAN: That is exactly what I said, I am not sure that it is.

Senator BOUFFARD: The word "assessment" is defined as being an assessment and includes reassessment, but it is not the same thing exactly. It includes reassessment.

Senator BRUNT: What is the number of the interpretation section?

Mr. IRWIN: Section 139. (1) (d).

Senator THORVALDSON: There is your whole point.

Senator ASELTINE: I am willing to accept that.

The CHAIRMAN: I can understand Senator Aseltine's viewpoint.

Senator BRUNT: Nice try, Mr. Chairman?

The CHAIRMAN: Yes.

I would like to have a statement from Mr. Irwin.

Senator CROLL: You are going to have more statements than Khrushchev makes.

Senator THORVALDSON: Would that be worth more than a statement by the minister?

The CHAIRMAN: We have no statement from the minister on this point. This point which I have raised is not a point which is lightly raised and when it was raised I was fully aware of the fact and I did not suddenly discover that assessment was defined, I knew it. It was the particular phrasing of subsection (2) by which I felt there could be confusion. I notice in one place they do use the language of assessment, reassessment and original assessment and here they do not, and that is sort of playing fast and loose with a statutory definition.

Senator McDONALD: Would the draftsman explain it?

The CHAIRMAN: I don't think the draftsman is here.

Mr. HARMER: We would certainly interpret it as including reassessment.

The CHAIRMAN: The only benefit I could get out of that would be that if I was dealing with you I did not have to go to the court because if the court had a different view I would be in trouble.

I am not going to hold up the deliberations, though. I have raised the issue.

Senator CROLL: I move that we report the bill.

The CHAIRMAN: I warn the committee now that this is your last chance to discuss this bill until third reading.

Shall I report the bill with the amendments which have been proposed?

Hon. SENATORS: Agreed.











Third Session—Twenty-fourth Parliament  
1960

# THE SENATE OF CANADA

PROCEEDINGS  
OF THE  
STANDING COMMITTEE  
ON

## BANKING AND COMMERCE

To whom was referred the Bill S-25, intituled:  
An Act to make Provision for the Disclosure of Information  
in respect of Finance Charges.

---

The Honourable **SALTER A. HAYDEN**, *Chairman*  
WEDNESDAY, JULY 13, 1960

---

The Honourable **ADRIAN K. HUGESSEN**, *Acting Chairman*  
THURSDAY, JULY 14, 1960

LIBRARY

AUG 15 1960

UNIVERSITY OF TORONTO

No. 1

WITNESSES:

Mrs. V. W. G. Wilson, of Montreal, National Treasurer, Canadian Association of Consumers. Mr. F. P. Varcoe, Q.C., of Ottawa, Solicitor, and Mr. E. F. K. Nelson, of Toronto, General Manager, Canadian Retail Federation. Mrs. D. L. Ross, of Montreal, Chairman, Family and Child Welfare Division, Mr. F. I. Smit, of Ottawa, Executive Secretary, Miss P. Burns, of Ottawa, Acting Director and Miss F. Christie, of Ottawa, Vice-Chairman, all of the Canadian Welfare Council. Dr. H. H. Hannam, of Ottawa, President, and Mr. David Kirk, of Ottawa, Secretary Treasurer, of the Canadian Federation of Agriculture. Mr. H. B. Moore, of Toronto, Executive Vice-President of the Federation of Automobile Dealer Associations of Canada.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1960

# THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

## The Honourable Senators

* Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor ( <i>Norfolk</i> )
Connolly ( <i>Ottawa West</i> )	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	* Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

---

\* *Ex officio member.*

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, June 23rd, 1960:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Croll, seconded by the Honourable Senator Roebuck, for second reading of the Bill S-25, intituled: "An Act to make Provision for the Disclosure of Information in respect of Finance Charges".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Croll moved, seconded by the Honourable Senator Roebuck, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNeill,  
*Clerk of the Senate.*

---

WEDNESDAY, July 13, 1960.

The Standing Committee on Banking and Commerce to whom was referred the bill (S-25), intituled: "An Act to make Provision for the Disclosure of Information in respect of Finance Charges", report as follows:—

Your Committee recommend that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bill.

All which is respectfully submitted.

SALTER A. HAYDEN,  
*Chairman.*





## MINUTES OF PROCEEDINGS

WEDNESDAY, July 13, 1960.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.30 A.M.

*Present:* The Honourable Senators: Hayden, *Chairman*; Aseltine, Bouffard, Brunt, Burchill, Campbell, Crerar, Croll, Dessureault, Golding, Horner, Hugessen, Isnor, Lambert, Leonard, McDonald, McKeen, Pouliot, Power, Pratt, Roebuck, Thorvaldson, Wall, White and Woodrow—25.

*In attendance:* Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill S-25, An Act to make Provision for the Disclosure of Information in respect of Finance Charges was considered.

Mrs. V. W. G. Wilson, of Montreal, National Treasurer, Canadian Association of Consumers, presented a brief in support of the Bill and was questioned.

Mr. F. P. Varcoe, Q.C., Solicitor, of Ottawa, and Mr. E. F. K. Nelson, of Toronto, General Manager, Canadian Retail Federation, presented a brief and were heard in opposition to the Bill.

At 12.45 P.M. the Committee adjourned.

At 2.00 P.M. the Committee resumed.

*Present:* The Honourable Senators: Hayden, *Chairman*; Bouffard, Campbell, Croll, Euler, Farquhar, Golding, Horner, Hugessen, Leonard, McDonald, McKeen, Power, Pratt, Roebuck and Wall—16.

*In attendance:* Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Consideration of Bill S-25, was resumed.

Mrs. D. L. Ross, of Montreal, Chairman, Family and Child Welfare Division, presented a brief assisted by Mr. F. I. Smit, of Ottawa, Executive Secretary, Miss P. Burns, of Ottawa, Acting Director and Miss F. Christie, of Ottawa, Vice-Chairman, all of the Canadian Welfare Council were heard in support of the Bill.

A brief filed by The Canadian Chamber of Commerce, was Ordered to be printed as part of the proceedings of this Bill.

On Motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Croll, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bill.

At 3.00 P.M. the Committee adjourned until 10.30 A.M., tomorrow, Thursday, July 14, 1960.

Attest.

A. Fortier,  
*Clerk of the Committee.*

THURSDAY, July 14, 1960.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 A.M.

*Present:* The Honourable Senators: Aseltine, Brunt, Burchill, Croll, Des-sureault, Golding, Horner, Hugessen, Isnor, Lambert, Leonard, Macdonald, McDonald, McKeen, Power, Pratt, Roebuck, Taylor (Norfolk), Turgeon, Wall, White and Woodrow—22.

In the absence of the Chairman, the Honourable Adrian K. Hugessen, was elected Acting Chairman.

*In attendance:* Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Consideration of Bill S-25, An Act to make Provision for the Disclosure of Information in respect of Finance Charges was resumed.

On Motion of the Honourable Senator Croll it was Ordered that the following documents be incorporated in today's proceedings.

1. Letter from the President of the Canadian Labour Congress.
2. Pamphlet issued by the Royal Bank of Canada.
3. Document showing "Eaton's Cycle Charge Account Agreement".

Dr. H. H. Hannam, President, and Mr. David Kirk, Secretary-Treasurer, both of Ottawa, of the Canadian Federation of Agriculture presented a brief and were heard in support of the Bill.

Mr. H. B. Moore, of Toronto, Executive Vice-President of the Federation of Automobile Dealer Associations of Canada, presented a brief and was heard in opposition of the Bill.

The Honourable Senator Croll moved that the Law Clerk of the Senate be instructed to prepare for the information of the Committee a legal opinion on the constitutionality of the Bill.

The said motion was concurred in.

At 12.45 P.M. the Committee adjourned to the call of the Chairman.

Attest.

A. Fortier,  
*Clerk of the Committee.*

## THE SENATE

### STANDING COMMITTEE ON BANKING AND COMMERCE

#### EVIDENCE

OTTAWA, Wednesday, July 13, 1960.

The Standing Committee on Banking and Commerce, to whom was referred Bill S-25, an Act to make Provision for the Disclosure of Information in respect of Finance Charges, met this day at 11.30 a.m.

Senator Hayden in the Chair.

The CHAIRMAN: Gentlemen, we have before us Bill S-25, to make Provision for the Disclosure of Information in respect of Finance Charges. We have a number of witnesses and a number of briefs. I should tell the committee we sent out a lot of notices to various organizations. Senator Croll very kindly furnished a list of about two and a half foolscap pages and we sent notices to those people. We received very few acknowledgements. Then there were some other organizations that registered their names with the Clerk of the Committees while the bill was in the Senate, asking that they be given an opportunity of being heard if and when the bill was heard in committee.

Senator ISNOR: Are you going to put on record those to whom invitations were sent?

Senator CROLL: I was going to do that in a minute.

Senator ISNOR: Those who would be favourable to your bill, I suppose?

Senator CROLL: Not one of them was favourable to the bill.

The CHAIRMAN: I would not make that assumption. I did not make it at the time, but I sent out the notices nevertheless. There were several of these organizations who had so registered themselves who got in touch with me at a time when these were the only people who we knew were likely to be witnesses, and I took the responsibility as chairman to say that if they were here this morning they would be heard. Therefore, I feel that the committee should implement my undertaking and hear these people. We should hear others too but I think we should hear them first.

Senator CROLL: Mr. Chairman, may I at this stage make a few comments. I think the committee knows that the time has been rather short to obtain too much of a cross-section opinion. I did ask the chairman to send out notices. We have here today in support of the bill the Canadian Welfare Council which has some four representatives; the Canadian Association of Consumers, and the Canadian Federation of Agriculture. I think the Canadian Congress of Labour is represented. There are a few here in opposition to the bill. I understand that Mr. H. B. Moore, Executive Vice-President of the Federation of Automobile Dealers Associations of Canada is here as is Mr. F. P. Varcoe, Q.C., for the Canadian Retail Federation.

The CHAIRMAN: And Mr. Nelson of that some organization.

Senator CROLL: When I asked for invitations I thought I would give the people who are in this business an opportunity to come here and justify themselves. As to my honourable friend from Halifax-Dartmouth (Hon. Mr. Isnor), I will tell him that we invited Town & Country Limited of 68 Argyle Street,



Halifax, which is in the second mortgage business, to come here. We also invited Gordon Sutherland Realty Limited, 501 Barrington Street, Halifax, and Preferred Realty Limited, also of 501 Barrington Street, Halifax. Mr. Gordon Sutherland appears to be President of both those companies. We also invited Mr. B. Sheffman of Town & Country Limited. Those companies are all from Halifax. Also from Halifax we invited the following companies: Bluenose Realty Limited, Dutch Realty Limited, Family Realty Limited, Jubilee Realty Limited, and Loan Realty Limited. These are all under the direction of a man by the name of Charles W. Clarke, a barrister, of 4 Toronto-Dominion Bank Building, Halifax.

I did not expect they would appear but they were invited to appear. I thought they ought at least to be extended an invitation. I did not neglect Toronto and I asked that United Global Financial Systems of 67 Richmond Street West, Toronto, to appear. I also invited Valley National Financial Corporation of 62 Richmond Street West, Toronto; Alleghaney Finance Corporation Limited of 67 Richmond Street, Toronto, and Quay Funding Corporation of 62 Richmond Street West, Toronto. We also invited Dialling Investments Limited, O.P.S. Investments Limited and Nabob Investments Limited. These happen to belong to the same man, Mr. Irving Weverman. That is a small list of the number I invited.

The CHAIRMAN: May I just interject at this moment. My friend is using the word invited. What happened is we wrote them a letter telling them this bill had been referred to committee and that the first sitting would be today and we said, "If you wish to make any representations please communicate with the Clerk of Committees and we will be glad to arrange a time." Now, we have not heard from them.

Senator CROLL: That is correct. The purpose of putting this on record is to indicate that no one was forced to come here. There were no subpoenas issued. An invitation was extended in the form outlined by the chairman. My suggestion to the committee is that the three people here this morning in support of the bill should be heard and then the others would be heard as well. I thought that after we heard them I would ask the committee to request our legal advisers to give us a written opinion as to the constitutionality of the matter and then we will take it from there and see what happens. I would ask that the Canadian Welfare Council be called first. Their delegation is comprised of Mrs. D. L. Ross, Chairman; Miss P. Burns, Acting Director; Mr. F. I. Smit, Executive Secretary, and Miss F. Chistie, Vice-Chairman. They have a brief to present.

Senator PRATT: Was a notice sent to the large finance corporations that extend their operations throughout Canada? I did not recognize any of their names in the list read out.

Senator CROLL: I was informed that their solicitors were keeping a watching brief here, that they were in the corridors. Whether these large finance corporations are here this morning I do not know but they were constantly in touch with the secretary as to the contents of the bill.

Senator PRATT: I was just wondering about the large finance corporations.

The CHAIRMAN: I think we will cover the field pretty well before we are through, but as to the order of calling witnesses I made a certain commitment. An invitation was sent to the Federation of Automobile Dealers Association of Canada and the Canadian Retail Federation. Is Mrs. Wilson of the Canadian Association of Consumers from Montreal?

Senator CROLL: Yes.

The CHAIRMAN: I made a commitment that if she came from Montreal we would hear her today. The Canadian Retail Federation are coming from Toronto, and I said we would hear them. Therefore, I think the order is that since the Canadian Retail Federation came first, I suggest we hear them.

Senator CROLL: Mr. Chairman, I am going to oppose that now. I think it is highly unfair for me to present a bill and that the people who are opposed to it are the people who are to be heard first. I am entitled to an opportunity to present those people who are in favour, and then anyone who is opposed can come in and give their opposition. There is this further distinction: the people here today in opposition to the bill are either employees of an association or hired by an association; the people I have here are officers of associations, national, and in no sense resemble them. For that reason, I ask that these people be heard first, and then you will hear what is in support of the bill, and afterwards what is against it.

The CHAIRMAN: I have told the committee how I arrived at this order. Is the committee prepared—

Senator ISNOR: Mrs. Ross is from Montreal and is in the same position as the other lady from Montreal.

The CHAIRMAN: The names I have mentioned are names who spoke specially, and I said, "Yes, we will hear you today."

Senator ROEBUCK: We have a lot of time left in the day.

The CHAIRMAN: Certainly. I hope we will hear them all.

Senator ROEBUCK: I think Senator Croll is right.

Senator CROLL: The people I have will have short briefs.

Senator ROEBUCK: If necessary, we will sit this afternoon.

The CHAIRMAN: I propose to ask, having committed myself as chairman to the Retail Federation and to the Federation of Automobile dealers, and also to Mrs. Wilson, through our clerk of committees, that those are the ones we should hear first, but Senator Croll has raised a question.

Senator GOLDING: Would it not be better for these people themselves who are supporting the bill to be heard, and then we would have an opportunity of dealing with the situation? I imagine if I were opposing the bill I would want to hear those in support of it first.

The CHAIRMAN: Well, that was a choice they could have made.

Mr. Nelson, do you wish to proceed at this time? I understand the answer is "yes".

Mr. NELSON: Well, I came here for the purpose.

Senator LEONARD: May I suggest that we hear the Association of Consumers first? Mrs. Wilson has come from Montreal, and she is, I understand from Senator Croll, supporting him. Let us hear her first, and then proceed to some of the others from out of town. We can hear the Welfare Council. I understand they are here in Ottawa?

Senator ISNOR: No.

Senator CROLL: No, they are not. Gentlemen, I must make the point again, and you can rule. I have been here a few years, and been on other committees a few years, and never in my life have I heard of a bill being presented with the opposition first. A bill is presented, and you make a case, and you either make it or don't.

Senator BRUNT: Haven't you made a case?

Senator CROLL: Well, give them a chance to make a case, then the opposition will come in if there is any opposition. I am not denying them the right to be heard. And this is not going to be disposed of today, although it might be,

but there may be others to be heard. But this business of hearing these people who come here from the Federation of Automobile Dealers—these are people who are on the staff, and I do not suggest they have to spend another day here, but if they have, that is a chance they take. These other people, however, are not paid employees in any sense at all; they are heads of organizations, one from Montreal. Mr. Hannam of the Federation of Agriculture is here, and if he must be stood for a while, he will understand. I asked the right to present the case for the affirmative, and anybody else can come in that the chairman sees fit to call.

The CHAIRMAN: I do not want to make speeches all the time.

Senator CAMPBELL: I agree entirely with Senator Croll. This is a private bill introduced by him. As far as I can recall over the years I have been here, a person who comes in with a private bill is entitled to bring it before the committee, and the procedure and practice has been for him to call his witnesses to explain the bill and speak in support of it; and it seems to me that irrespective of the convenience of witnesses we should adhere to that procedure. I think probably that if we get on with it we can hear all the witnesses before the day is out.

The CHAIRMAN: Of course, it goes a little further than that, because the first people in touch with me are those I have mentioned. I had no other witnesses then, and I suggested that they could come down today and we would hear them. That is my undertaking to them. Now, if the chairman has any responsibility, surely he can give that kind of undertaking. If not, I think I have a misinterpretation of the role of a chairman.

Senator ROEBUCK: You did not say you would hear them first.

The CHAIRMAN: No, but I want to make sure they are heard today, because I invited them.

Senator ROEBUCK: I would like to hear them, too, and to do everything possible for them to be heard.

The CHAIRMAN: Well, that is my objection. It is not a question of doing everything possible, I want to make sure they are heard today, because I gave an undertaking.

Senator ROEBUCK: Well, perhaps Senator Croll did, too.

Senator CROLL: When you gave your undertaking, Mr. Chairman, you did not know the house was going to sit this afternoon and tonight, and you did not know there was an important bill on before the house that required our presence in the house. I didn't know it, none of us did, but it just happens by coincidence. Now, I am positive we can fulfill your promise by one-o'clock, if we get on with this.

The CHAIRMAN: What is the wish of the committee? As far as Mrs. Wilson is concerned, I have an undertaking there, too, because I told the clerk of committees that if she came from Montreal we would hear her.

Senator CROLL: I would like to call in as support first the Canadian Welfare Council, Mrs. Ross, and then Mrs. Wilson, and then Mr. Hannam. That is my case for the time being.

Senator BOUFFARD: I think we should abide by the chairman, who has taken some responsibility in so far as some other witnesses are concerned who are here. Those who came without any promise from the chairman could be heard later on.

The CHAIRMAN: My suggestion is that we hear Mrs. Wilson first, and then the other people.

Senator BOUFFARD: Agreed.

The CHAIRMAN: Mrs. Wilson?

Senator WHITE: Before you start, may I ask Senator Croll one simple question?



The CHAIRMAN: Yes.

Senator WHITE: Senator Croll, you used the words this morning, "people who carry on business". In section 2 of the bill you used the words "loan, residential mortgage"; and you say that "person" means any individual. Then in clause 3 you say, "Every person who carries on the business of extending credit", and so on. Am I correct in this: Do you consider that this bill will apply to an individual who gets only one loan, say on a promissory note. Would you say as a matter of fact that he would be considered a person who carries on the business of extending credit and would be subject to the provisions of this bill?

Senator CROLL: I would think so. That was not the thought that I had in mind.

Senator WHITE: But it says "any individual".

Senator CROLL: Well, the committee would have to say.

Senator WHITE: The reason I asked the question, Mr. Chairman, is that it matters a great deal whether this bill applies to people who carry on business which we regard as finance companies or individuals. If it is in regard to an individual, it is altogether different.

Senator CROLL: I think the individual states the amount of interest on the promissory note.

Senator WHITE: But that would not comply with section 3, though.

The CHAIRMAN: Senator White, what I suggest is that as to the draughtsmanship and the scope of the bill, and all of those things, let us defer consideration of that until after we have heard the witnesses.

Senator WHITE: Who is going to tell us to whom it applies—the Department of Justice?

The CHAIRMAN: I suggest at some stage the committee will have to make some resolution of its own as to what is the scope of the bill. We have Mrs. Wilson, who is the national treasurer of the Canadian Association of Consumers, present, and she will now speak.

**Mrs. V. W. G. Wilson, National Treasurer, Canadian Association of Consumers:** Mr. Chairman, first of all I would like to read a letter which our president, Mrs. Atkinson, has written to Senator Hayden as chairman of the committee:

The Canadian Association of Consumers is in hearty sympathy with the object of Bill S-25, which is the disclosure of total interest and finance charges on consumer credit sales contracts in terms of simple annual interest rates.

We believe there is urgent need for such a measure. It would make possible one of the aims of our Association with regard to Consumer Credit, that consumers may know at the time of purchase the cost of the credit involved in that purchase when it is not made for cash.

For some time now the inexperienced and unwary buyer has been encouraged to buy on easy credit terms which seriously complicate his purchasing decisions, because they are made without the factual information as to cash price which would enable him to compare values, or to calculate the extra cost of time payments extending over months, or even years, and including a maze of interest, insurance and carrying charges which is not enabled to comprehend. In many cases goods are advertised and sold without mention of the cost, merely on the basis of so many dollars a month until paid. Such terms are now being widely offered to teen-agers with the intent, and the danger, of involving them at an early age in habits of over-spending and perpetual debt.



Consumer credit has become a part of our modern economy of retail distribution. It is against the abuses of consumer credit that our members protest. Disclosure of total interest and finance charges, as provided for in Bill S-25, would contribute materially to the limitation of present abuses. It would make it possible for consumers to make a wise use of credit and assist them in avoiding costly, and sometimes disastrous, financial commitments.

That is Mrs. Atkinson's letter which is really our official statement, but I would like to add a few words to it, Mr. Chairman, if I may.

First of all, I would like to say that so far as our organization is concerned the area of this bill with which we are concerned is conditional sales and instalment buying which apply to the purchases of consumer goods. This is our area. The reason why we are so particularly interested is this; it is conceded in Canada that most of the shopping for consumer goods is done by women. The Canadian Association of Consumers believes that through wise purchasing we improve the standard of living in Canadian homes, and that we contribute to the stability of the economy.

Credit is an accepted means of distribution, and is becoming prevalent in all income groups. Members of our organization wish to do their instalment buying intelligently. Vendors offer a wide variety of terms, and we must be able to assess these and shop for credit as critically as we shop for, let us say, a refrigerator.

The aim of this bill is simple. (1) Consumers purchasing on credit should have complete and reliable information as to the cost of the goods and the cost of finance. (2) The onus of providing this information is on the vendor. This is particularly important because, two honourable senators—you see I have been reading *Hansard*—speaking about this bill, said that computing the cost may be very complicated, particularly the true interest rate of the cost of the loan. Vendors have computers, interest tables, trained staffs and the assistance of credit granters associations and are competent to make these computations. We, the consumers, have no such tools and knowledge, but we must know the results if we are to intelligently use credit. Tenderness has been expressed for vendors by some members of the Senate over the plight of these men who must make the necessary calculations. May I plead for some tenderness for the consumer who is purchasing and using credit? (3) The reason we are glad that the bill requires the expression in percentage or simple annual interest rate of the unpaid balance be stated, is clear. When we lend or borrow money we think in terms of gaining in percentage for lending and we count the cost in percentage for borrowing. This is the best yardstick for the average consumer, as we are used to per cent.

I called four firms extending credit in Montreal yesterday and they told me of four different credit plans. One, a revolving credit account, two, a charge account, three, an easy term credit account and, four, an optional account. I was left in complete confusion. The only way I could compare the cost of credit using the four respective accounts, would be knowing the cost in percentage on the principal unpaid.

Senator ROEBUCK: Did you ask what the interest rate was?

Mrs. WILSON: No. I asked what the plan was. One said it was 1-½ per cent per month on the unpaid balance—that was a revolving charge account. Another said it was 9 per cent on the unpaid balance, per month.

Senator ISNOR: Which one was that?

Mrs. WILSON: That was a charge account. I am not going to tell the stores, because that would hardly be fair. The third said it charged no interest but that there was a service charge—the difference, I don't know.

Senator ISNOR: Did they give you the service charge?

Mrs. WILSON: Yes, but I do not think I should tell the amount—that would be unfair. I am simply explaining the multiplicity of systems. The fourth said it was a mixture of service charge and a small interest charge. When I was finished I was completely confused, and I do not think it is in the interest of Canadians to be confused when shopping for credit.

Senator BOUFFARD: Did you ask what the sale price would be if you paid cash?

Mrs. WILSON: Yes.

Senator BOUFFARD: Did you then ask what it would be if you bought the merchandise on a monthly basis?

Mrs. WILSON: On the revolving credit account you paid so much per month, and  $1\frac{1}{2}$  per cent on the unpaid balance. The other was 9 per cent per month on the amount you had not paid. The one that offered the service charge told me that I would pay an amount in four months, and still have the service charge. They were all completely different.

The CHAIRMAN: Did they tell you what it would cost if you took credit, as against paying cash?

Mrs. WILSON: No.

The CHAIRMAN: Did you ask?

Mrs. WILSON: No. I asked what the plan was, and this is what I was told. This is what the average customer is told, and I was trying to be "Mrs. Average Consumer" which, by the way, I am.

Senator LEONARD: Did you get anything in writing?

Mrs. WILSON: No. This is simply what the average woman does when she asks for credit.

The CHAIRMAN: Did this arise out of your going into the store and asking to buy on credit?

Mrs. WILSON: All I said was, "How much credit could I get? What should I do if I wanted to buy a chesterfield on time?"

Senator PRATT: The 9 per cent you mention would be the per annum rate?

Mrs. WILSON: Per annum. The other was  $1\frac{1}{2}$  per month, which to me is twice the amount. The point I am raising is the multiplicity of schemes, and the inability of the average woman consumer who does the shopping to understand what the differences are.

The CHAIRMAN: That was a pretty general question you asked about your wanting to buy a chesterfield. May I suggest as a mere male, who would not be as astute as you would be, that there would be a wide range of chesterfields at various prices.

Mrs. WILSON: What I said was: if I was buying a chesterfield, what credit terms could they give me. They said I must pay down 10 per cent, plus the tax—I live in Montreal—and the balance in four instalments, and there was a service charge.

The CHAIRMAN: Did you ask what the service charge was?

Mrs. WILSON: Yes. They said it was \$4.50 on \$40 for four months.

Senator WOODROW: Mrs. Wilson, would you mind telling us how many members you have in your association?

Mrs. WILSON: Yes. We have approximately 30,000 members in every province across Canada; we have as participants in our organization a great many of Canada's largest womens' groups. We were formed by the National Council of Women; we have the I.O.D.E., the National Council of Jewish Women, the Salvation Army, and so on. It is quite a who's who of group organizations in which there are a half million women.

I would like to say that we feel that this bill lends some protection for the unwary and inexperienced. I see the Canadian Welfare Council is represented here, and I will let some of my points be mentioned by that group, because I believe they can cover them better than I could.

I notice at page 662 of *Hansard*, Mr. Chairman, you refer to people prepared to pay any price to gratify their wants, up to 150 per cent. I feel that you do not view this without concern, and I sincerely hope that there are not too many people in this category, whom I call quite irresponsible Canadians.

The CHAIRMAN: Which category are we talking about now?

Mrs. WILSON: The people that you describe.

The CHAIRMAN: I was getting concerned that I might be in this category.

Mrs. WILSON: No; it is the category you mention at page 662. I feel these are not responsible Canadians. I would hope that the disclosure which Senator Croll's bill proposes would at least give some pause for thought, and might save some disaster.

The other type of person we would like to protect are those who are indulging in teen-age credit. This is being extended without parental consent, and is producing young people who over-spend and are constantly in debt. These are not the type of Canadians we want to develop. To clearly state the cost might be a deterrent to some of these young people.

The last point I would mention is with respect to credit sales. Senator Connolly on May 31st last, at page 70 of *Hansard*, gives the figures for outstanding credit at the end of 1959, some \$2,187 million. Finance companies tell us that of the 4,500,000 families, 1 million families are using credit or an instalment buying system for their consumer needs. Certainly, credit is becoming very big business in this country.

Increased salaries and steady employment have made Canadians good risks. Increased costs of consumer goods due to the excessive use of credit, is in the opinion of some economists injurious to the national economy and tends to be inflationary. I do think that the level of financial charges may have been established while the use of credit was experimental.

You will be interested to know that reports from retail credit, credit granters and trade finance meetings, claim a very high level of collections. At one recent meeting it was reported that 70 per cent of instalments were collected in a routine manner, 29 per cent were collected by means of "collections" and 1 per cent was uncollectable. Instalment credit selling increases sales, so that there is a profit on both the sales and on the credit.

It is the view of the Canadian Association of Consumers that dealers should and would bear the responsibility of the disclosure of the cost of each credit sale and that consumers are entitled to this information. Given the facts we will shop critically for credit service and revive competition in the consumer credit market.

The CHAIRMAN: Any questions?

Senator ISNOR: May I ask Mrs. Wilson a question with respect to the 1 per cent uncollectable?

Mrs. WILSON: That means that 99 per cent of credit sales are good, as reported by this one particular meeting.

Senator BOUFFARD: With respect to teen-agers getting credit, are you aware that under the law in the province of Quebec teen-agers purchasing merchandise for credit are well protected; in other words, they need not pay if they do not wish to?

Mrs. WILSON: Every morning as I eat my breakfast I hear a radio broadcast offering young people teen-age credit. I feel this is an exceedingly bad thing. I wondered myself if this would be collectable.



Senator BOUFFARD: You know that under the law if a minor negotiates a transaction, the amount involved is uncollectable if he does not choose to pay?

Mrs. WILSON: We have discussed that too, but I think it is a bad habit for young people to get into.

The CHAIRMAN: Perhaps they should get a little training at home.

Mrs. WILSON: I quite agree, they should.

Senator LEONARD: Mr. Chairman, I think we should compliment Mrs. Wilson on a very excellent brief.

Hon. SENATORS: Hear, hear.

The CHAIRMAN: I suggest we now hear Mr. Nelson, general manager, of Canadian Retail Federation, and after that we will hear Mrs. Ross.

Mr. NELSON: Mr. Chairman, if it pleases the committee, may I suggest that you hear Mr. Varcoe first, as he has a short presentation to make on behalf of the association?

The CHAIRMAN: Satisfactory. Mr. Nelson should explain the aims and purposes of his organization. He is the General Manager of the Canadian Retail Federation. I would suggest that he tell us what his organization is.

Mr. NELSON: Mr. Chairman, the Canadian Retail Federation is a voluntary organization. It is Canada's national retail trade organization. Its membership consists of individual retail companies and associations representing various classifications of merchants. Some 41 associations which are completely independent, also hold membership in the federation. It is, therefore, I think, reasonably representative of the retail trade of this country.

The CHAIRMAN: If it is agreeable, I will now call upon Mr. F. P. Varcoe to present his submission.

**Mr. F. P. Varcoe, Q. C., Legal Counsel, Canadian Retail Federation:**

Mr. Chairman, I have given consideration to the question whether Senate Bill 25, now being considered by the Banking and Commerce Committee will, if enacted by Parliament, be legislation within the competence of Parliament.

Senator CROLL: Mr. Chairman, Mr. Varcoe is not called here for the purpose of giving us a legal opinion on the validity of the bill. We get our legal opinion from our legal officers and whatever his views are, they are his views to express to his own clients.

The CHAIRMAN: I think we are entitled to hear any opinion.

Senator CROLL: Any legal opinion?

Senator LEONARD: Mr. Chairman, I think the main question here is as to the constitutionality of the bill. That is the basis on which the argument was made in the house, and if it is our view that it is unconstitutional then, of course, that disposes of it.

The CHAIRMAN: As I understand it, Mr. Varcoe is appearing before us on behalf of the Canadian Retail Federation and he is making a presentation on their behalf. That federation is making a presentation divided into two parts; Mr. Nelson is making a presentation on one part of the bill and Mr. Varcoe on the other. Mr. Varcoe's presentation is directed towards the question as to whether or not such legislation would, in his opinion, be *ultra vires* or *intra vires*. I think we are entitled to hear any opinion that any people want to make here. We have gone pretty far on listening to opinions on other matters, and I remember in connection with the provision of the Criminal Code we heard a variety of opinions on the various sections and in many of them we were told that the Parliament of Canada could not do just that.



Senator ROEBUCK: But we went ahead and did it.

The CHAIRMAN: Yes, we went ahead and did it. We are certainly entitled to hear the opinion of anyone of standing.

Senator ROEBUCK: It is not a question of standing—if they live in Canada they have a right to be heard by us but they have no official standing, and any statement made by Mr. Varcoe is not from the Department of Justice at the present moment, it is a personal opinion and that is all. I would be very much interested in hearing it.

The CHAIRMAN: Will you proceed, Mr. Varcoe.

Mr. VARCOE: I observe that the long title of this bill is, "An Act to make Provision for the Disclosure of Information in respect of Finance Charges". Finance Charges are defined to include interest, fees, bonuses, service charges, discounts and any similar type of charge.

The application of the bill extends to every individual, partnership, association, business trust, corporation or unincorporated organization which furnishes credit in the course of its business.

It provides that every such person is guilty of a criminal offence unless, before a transaction involving extension of credit becomes legally binding, he furnishes a statement setting forth the total amount of the finance charges to be borne, and the percentage relationship, expressed in terms of simple annual interest, that the amount of the finance charges bears to the principal obligation.

To appreciate the ramifications of this Bill, it is necessary to look at the definition of "credit" found in clause 2 (a). An examination of this definition indicates clearly that the bill, if enacted, will regulate, in the manner I have indicated, every business transaction involving the grant of credit into which the inhabitants of the provinces are free to engage.

In my view, a statutory requirement that such information be disclosed, extending to the whole field of private business, would be a law in relation to "Property and Civil Rights in the Provinces", and so within the exclusive jurisdiction of the provincial legislatures.

The draftsman fully recognizing that such a regulation is ordinarily a provincial matter, has endeavoured nevertheless to validate the bill by invoking the power of Parliament to legislate in relation to criminal law by the device of making it a criminal offence to fail to disclose the required information. The admission of such a device as valid would, as has been determined by the highest tribunals having jurisdiction to interpret the British North America Act, have the effect that Parliament could assume exclusive control over the exercise of any class of civil rights within the provinces by the device of declaring those persons to be guilty of a criminal offence who, in the exercise of those rights, did not observe the conditions imposed by the Dominion. I refer particularly to two decisions of the Judicial Committee of the Privy Council, viz.: Canadian Federation of Agriculture and Attorney General of Quebec, [1951] A.C. 180 (Margarine Case); Attorney General for Ontario vs. Reciprocal Insurers, [1924] A.C. 328.

It is my considered opinion that if this bill became law, the Canadian courts would apply the principle I have just stated to invalidate such a law.

It is possible that the draftsman considered that the bill might also be justified as being in relation to "Interest", a matter assigned to Parliament. I am satisfied, however, that the courts would reject this contention for these reasons; the bill applies not only to interest but also to fees, bonuses, service charges, discounts and any similar type of charge, matters within the exclusive jurisdiction of the provinces. It is not suggested by any provision in the bill that any of these charges are in reality interest charges masquerading as something different, or that all of these charges are in reality interest charges, or that interest and other charges are so commingled as to be inseverable with the

result that it is necessary to regulate these charges in order to regulate interest. There is nothing in the bill to suggest that the principal purpose of the legislation is to deal with interest. There is nothing, indeed, to indicate that all of the transactions to be regulated involve the payment of interest. In fact, the application of the proposed law to the whole field of Canadian business involving the extension of credit raises, to my mind, the presumption that even transactions involving no interest payment are to be regulated.

The requirement that the percentage relationship that the charges bear to the principal obligation be expressed in terms of simple annual interest could not have any useful effect in this connection. To provide that charges that are not interest charges shall be shown in a form as if they are interest charges is not legislation in relation to interest.

For these reasons it is my considered opinion that this Bill S-25, would not constitute legislation within the competence of the Parliament of Canada.

The CHAIRMAN: Are there any questions?

Senator ROEBUCK: I think, Mr. Varcoe, you gave an opinion in respect of one of the acts which is now on the statute books, the Small Loans Act, and at that time you gave an opinion different from what you are saying now.

Mr. VARCOE: Mr. Chairman, for one thing there was a preamble to that act which perhaps I had better read:

Whereas it has become the common practice for money-lenders to make charges against borrowers claimed as discount, deduction from an advance, commission, brokerage, chattel mortgage and recording fees, fines and penalties, or for inquiries, defaults or renewals, which, in truth and substance are, in whole or in part, compensation for the use of money loaned or for the acceptance of the risk of loss or are so mixed with such compensation as to be indistinguishable therefrom and are, in some cases, charges primarily payable by the lender but required by the lender to be paid by the borrowers; and whereas the result of these practices is to add to the cost of the loan without increasing the nominal rate of interest charged so that the provisions of the law relating to interest and usury have been rendered ineffective:

Now, that preamble was the basis of the opinion that I think you referred to in connection with the opinion I gave in 1938.

Senator ROEBUCK: I haven't got that before me at the moment. I just don't distinguish very clearly between them.

Senator CROLL: I have it before me.

Senator HORNER: Mr. Chairman, if you suggest it is *ultra vires* of the Dominion Parliament is it *ultra vires* for each province to pass any law with regard to interest charges?

Mr. VARCOE: It is a very difficult problem.

Senator HORNER: Companies with a dominion charter, for instance?

Mr. VARCOE: Yes. It may be that you would have to have complementary legislation.

Senator CROLL: Mr. Varcoe, you said at the beginning that this is a matter of property and civil rights, which is within the jurisdiction of the dominion Parliament.

The CHAIRMAN: No, he said these items of fees and bonuses and service charges were items.

Mr. VARCOE: That's right.

Senator CROLL: And then Senator Horner questioned you as to whether the provincial parliaments would have a right to pass laws with regard to interest charges.

The CHAIRMAN: Some of them have.

Senator CROLL: Mr. Chairman, do you mind. Mr. Varcoe can look after himself. Let him answer the question.

Mr. VARCOE: It may be that you would have to have complementary legislation, with the federal Parliament dealing with the interest features and the provincial parliaments dealing with the other matters.

Senator CROLL: In effect what you are saying is that what has changed your mind from the time—

Mr. VARCOE: My mind has not changed at all.

Senator CROLL: What has changed your opinion, then—let's have it that way.

The CHAIRMAN: I don't think the witness has said he has changed his opinion.

Senator CROLL: I am saying he has changed his opinion. Can I make that statement?

The CHAIRMAN: Oh, you can.

Senator ROEBUCK: Mr. Varcoe is quite capable of taking care of himself and so is Senator Croll. Let's hear what they have to say.

The CHAIRMAN: The Chairman has some responsibility too.

Senator CROLL: Not between us, you haven't.

The CHAIRMAN: I beg your pardon?

Senator CROLL: Not between Mr. Varcoe, the witness, and myself.

The CHAIRMAN: The only interest I have is to see that there are not any misstatements.

Senator CROLL: If there are any misstatements, Mr. Varcoe can correct me.

The CHAIRMAN: I still have a right.

Senator CROLL: Mr. Varcoe, you said when you were asked the question of what caused you in the main to give the opinion that you did in 1938, it was the preamble.

Mr. VARCOE: Yes, sir.

Senator CROLL: That's right, so—

Mr. VARCOE: I wrote the preamble for that purpose.

Senator CROLL: At that time.

Mr. VARCOE: Yes.

Senator CROLL: So what you suggest is that a similar preamble to this bill will make it—

Mr. VARCOE: If the persons responsible for the bill come to the conclusion that a preamble similar to that would express the truth in the trade, I don't know.

Senator POWER: What value has a preamble?

The CHAIRMAN: It has a lot.

Senator LEONARD: Don't you really mean that the pith and substance of the legislation you were dealing with in 1938 was interest?

Mr. VARCOE: Yes, sir.

Senator LEONARD: And in order to have this bill validated under the qualification of interest then the pith and substance of this legislation would have to be interest.

Mr. VARCOE: That is correct.

Senator CROLL: That is not what he said in 1938.

The CHAIRMAN: He has said that now.



Senator CROLL: No, he hasn't and the opinion is on the record as being indistinguishable or reasonably ancillary to legislation relating to interest. That is what he said in 1938.

The CHAIRMAN: That is exactly the same conclusion.

Senator CROLL: It isn't the same at all. Interest is one thing and being ancillary thereto is something else entirely.

The CHAIRMAN: If there is no pith and substance of interest then you have no ancillary rule.

Senator ROEBUCK: There is pith and substance.

The CHAIRMAN: That is the question under issue here. Is there?

Senator ROEBUCK: They always charge interest, or practically always, in these credit matters and therefore the other charges are ancillary to that.

Senator POWER: May I ask this question of Mr. Varcoe? I am free to admit I have not understood this. Can you validate something that is *ultra vires* by writing a preamble about it?

Mr. VARCOE: I think you can.

Senator POWER: You think you can?

Mr. VARCOE: If you state the facts to be as they are.

Senator POWER: There is nothing in the British North America Act that says by writing a preamble you can take away the exclusive jurisdiction from the provinces, surely.

The CHAIRMAN: Might I point out, Senator Power, that in the famous cleomargarine case there was a statute passed by the federal Parliament in 1885. It had a very lengthy recital. The mildest language they used in that recital was that it was a deleterious article of food. That was the basis on which the legislation was passed, and that legislation persisted until about 1950 when the Government referred the issue of constitutionality to the courts. In the Supreme Court of Canada, and particularly in the Privy Council, Mr. Varcoe was arguing the case on behalf of the Department of Justice and he was attempting to deal with the argument of the preamble but there was evidence that went before the court that for four or five years following the First World War the Government of Canada annually had passed a statute which said that "notwithstanding the provisions of this legislation margarine is an article of food which may be bought and sold and made."

Now, when Mr. Varcoe is making his argument in the Privy Council under those conditions I think in my layman's language I can say he was told that his preamble argument would not fight for him because there had been conduct by the Parliament of Canada subsequent thereto which indicated forcibly that it was not a deleterious article of food. That answers the question of when is it that a preamble does not work. It does not work if it is contrary to the facts of the situation.

Senator POWER: It does not answer my question.

Mr. VARCOE: In the judgment to which the Chairman has just referred the Privy Council referred to the repeal or the revocation, in effect, of the preamble in the earlier legislation. In other words, it seemed to appear to them that if that preamble had remained they would have been compelled to justify the legislation.

Senator WALL: I would like to ask Mr. Varcoe this question. I do not know what the import of this preamble is but I do know that the Small Loans Act states that the charges on a loan, which are to be equated to the finance charges in this bill, are very comprehensive. I wonder if he would read it to us at this point since he has read part of Bill S-25. What is a loan charge and what is the definition? I go to a small loan company and I get a loan of



\$500 under the Small Loans Act. I am protected whether there are service charges, bonuses or whatever it may be that is added in. That is all interest against that loan. I go to a store and I buy a chesterfield for \$500 and that chesterfield is going to be on a loan basis, which is really the same thing. The finance charges against that chesterfield are to include interest, and any ancillary items of interest—and I fail to see the fine distinction. Would that which is legal for small loans also be legal here?

Mr. VARCOE: Are you referring to the definition of cost?

Senator WALL: Yes.

Mr. VARCOE: Cost of a loan means the whole of the cost of the loan to the borrower, whether the same is called interest or is claimed as discount, deduction from an advance, commission, brokerage, chattel mortgage, and recording fees, fines, penalties, defaults or renewals or otherwise, and whether paid to or charged by the lender or paid to or charged by any other person, and whether fixed and determined by the loan contract itself, or in whole or in part by any other collateral contract or document by which the charges, if any, imposed under the loan contract or the terms of the repayment of the loan are effectively varied.

Now, may I just pause for a moment there to say that another distinction between the Small Loans Act and Bill S-25 is this, that in the Small Loans Act Parliament was dealing exclusively with persons lending money. Here you have extended the scope—it is to every retail transaction where credit is extended.

Senator WALL: May I interject at this point? If I am buying something on time I am being loaned money, directly or indirectly.

The CHAIRMAN: You are being extended credit.

Senator WALL: Well, the same thing.

Senator ROEBUCK: You are loaned the money, and you use the money to buy the goods.

Senator WALL: The same thing.

The CHAIRMAN: No, they are deferring you part of the payment, giving you credit. Surely that is different from putting a bundle of money in your pocket?

Senator ROEBUCK: It adds up to the same price—the same transaction.

The CHAIRMAN: If you don't want to see the difference, I suppose.

Senator ROEBUCK: Oh, no, that is not fair.

Senator HUGESSEN: Mr. Chairman, I hope you will not mind my saying so, but I think we are getting nowhere fast on this. I did not think we should be hearing Mr. Varcoe's interpretation of the legal side at this time. What I understood was that this meeting was to hear the representations, the factual representations, of various organizations with interest in this bill, one way or the other. I suggest that we finish with Mr. Varcoe and go on with others who will talk facts, and these other ladies and gentlemen who have come here for that purpose.

The CHAIRMAN: Is there anything more you wish to add, Mr. Varcoe?

Mr. VARCOE: No, sir.

The CHAIRMAN: You are deferring the question?

Senator CROLL: I want to reserve my right to call Mr. Varcoe after he has had an opportunity to read from the record what has been said, and so that I can read what has been said, as well as read other material relating to the subject.

Senator HUGESSEN: I want to do so, too. If he is going on, we will ask questions, of course.

The CHAIRMAN: Mr. Nelson, you have your brief before you?

Mr. NELSON: Shall I read it, sir?

The CHAIRMAN: Please.

**E. F. K. Nelson, General Manager, The Canadian Retail Federation:** The Canadian Retail Federation is Canada's national organization representing the retail trade. Its membership is voluntary and consists of individual retail companies and associations representing various classifications of merchants. The individual companies are direct members of the Federation; the member-associations are completely independent trade organizations in their own right. We have studied Bill S-25, the Finance Charges (Disclosure) Act, and appreciate this opportunity of placing our views before the committee. In our submission we will confine ourselves to the retail field and the forms of credit employed by retailers.

As a responsible organization we feel that all retailers should agree that consumers ought to be given full information as to the dollar cost of merchandise purchased. In addition, the customers of a retail store are fully entitled to know the dollar cost of any credit service supplied by a merchant.

We make a distinction there, Mr. Chairman, because unfortunately there are occasions, or have been occasions, when the cash price of the merchandise has not been shown separately. This has taken place in the past, and we want to put it on record that we feel that in any credit transaction, cash price should be clearly indicated.

Bill S-25, from the retail viewpoint, is unrealistic and unworkable. The bill makes two requirements: first, the total amount of the "finance charges" is to be disclosed in writing and, second, disclosure is required of the percentage of simple annual interest which the "finance charges" bear to the unpaid balance. In revolving credit accounts and in the relatively new so-called optional and flexible accounts the balance outstanding tends to be constantly changing, and in practice it is only possible to state in advance the credit charges for total outstanding balances at the end of any monthly credit period.

This difficulty is today typically overcome by printing on the back of the statement a table which readily indicates the service charge for various outstanding balances.

Here is a sample of one here. The company is not disclosed, but the case is an effectual one. I have additional copies.

Senator ISNOR: Will that be printed in the proceedings, Mr. Chairman?

Senator CROLL: No. If it is going to be printed, I have a slew that I have to print which do not quite agree with what he said.

Mr. NELSON: I haven't quite enough to go around, but there are quite a number.

Senator LEONARD: Why should it not be printed in the proceedings?

The CHAIRMAN: It is part of the record, certainly. If my friend has others, that is his privilege.

Mr. NELSON: This is not something that has merely been dreamed up, sir. It is an actual document used by a company in Canada today. It is a typical document of its type, and only the name of the company has been obscured.

The CHAIRMAN: This will be incorporated in your statement, then, when it is printed. I think there are some samples.

Mr. NELSON: For simplification, the amounts of outstanding balances are usually bracketed as follows: e.g. balance from \$100.01 to \$110.00—service charge \$1.60.

That is the one month's charge on that particular month. It decreases, of course, as the balance becomes less.

The amount of the total monthly payment required is also shown.

While we do not object to the disclosure of the dollars and cents cost of any form of retail credit, we are strongly opposed to the requirement of Bill S-25 relating to the disclosure of the percentage cost. The true dollar cost is the significant figure. It is this factor that is all-important to the consumer when contemplating a purchase and giving consideration to the family budget. Provided that the money cost of the credit is shown, there is no deception and the percentage rate is, in our opinion, of no practical use to the customer. In point of fact, a percentage figure could be confusing, perhaps deceptive, and very possibly inaccurate.

There is no general agreement on any single formula for the calculation of "simple annual interest".

May I depart for a moment?

The CHAIRMAN: Yes.

Mr. NELSON: I have often discovered these in the credit office of a member company. They were not prepared for this, but I did have some duplicated, and it simply illustrates some of the various ways of computing these percentage rates and the difficulty in following them.

The CHAIRMAN: Let me see if I understand it.

Mr. NELSON: I do not think I do, sir, so I cannot answer too many questions about it.

The CHAIRMAN: I just want to see what it is.

Mr. NELSON: It contains examples of some sort illustrating the various ways of converting these service charges into percentages. It illustrates various ways.

The CHAIRMAN: Yes. We have copies here and we can distribute them, and it will be part of your evidence. I see that the question posed is: "What is the effective rate of interest charged on a loan of \$1,000, when a total of \$1,060 is repaid in twelve equal monthly payments?" I see that you have attached to that question Answer I, Answer II and Answer III.

Mr. NELSON: They are not all the possible answers, but they are some.

The CHAIRMAN: Yes.

Mr. NELSON:

*Question:* What is the effective rate of interest charged on a loan of \$1,000, when a total of \$1,060 is repaid in 12 equal monthly payments?

*Answer I:*

In solving this problem, we shall first develop the theory needed to solve any problem of this sort.

Suppose that a loan of  $P$  dollars is made, and the borrower agrees to repay  $R$  dollars at the end of each period for  $n$  periods after receiving the loan. Then this will determine an effective interest rate  $i$  per period, and we shall now derive the relationship between  $P$ ,  $R$ ,  $n$ , and  $i$ .

This relationship is found by means of the principle of the "changing value of money through time." For instance, at a rate of 4% per annum, \$104 one year from now is worth the same as \$100 right now, because one shouldn't care whether he is given \$100 now, or \$104 one year from now. (If he did have a preference, then the interest rate applicable to his situation would be different from 4%.)



ACCOUNT NUMBER

TRH 12345

Mrs. Modern Shopper  
100 Main St  
Our Town Ontario

AMOUNT PAID

PLEASE DETACH AND RETURN THIS STUB WHEN PAYING BY MAIL.  
PRESENT ENTIRE STATEMENT WHEN PAYING IN PERSON. MAKE ALL  
CHEQUES PAYABLE TO YOUR CREDIT.  
CALLED CHEQUE IS YOUR RECEIPT.

BILLING DATE	PREVIOUS BALANCE	SERVICE CHARGE	PURCHASES	RETURNS AND SUNDRY CRS.	PAYMENTS	BALANCE	PAYMENT DUE
Oct 959	100.00	1.45	5.60 8.00 3.50 6.00	1.00-	9.00-	114.55	8.00

THIS STATEMENT COVERS  
TRANSACTIONS FOR ONE  
MONTH ENDING ON THE  
BILLING DATE SHOWN ABOVE.

PAYMENTS, RETURNS AND  
PURCHASES MADE AFTER  
BILLING DATE WILL BE SHOWN  
ON YOUR NEXT STATEMENT.

IF YOU WISH  
A 30 DAY  
CHARGE  
ACCOUNT  
PAY ABOVE  
AMOUNT WITHIN  
30 DAYS AFTER  
BILLING DATE

IF YOU PREFER  
TO PAY IN  
MONTHLY  
INSTALLMENTS  
PAY ABOVE  
AMOUNT  
UPON RECEIPT  
OF THIS  
STATEMENT

35 9

PLEASE BRING SALES CHECKS AND CREDITS  
WHEN MAKING AN INQUIRY ON THIS STATEMENT

\* IF THIS IS NOT SUFFICIENT TO MEET YOUR REQUIRE-  
MENTS YOUR CREDIT SALES MANAGER WILL BE  
GLAD TO DISCUSS A FURTHER AMOUNT WITH YOU.



# MONTHLY PAYMENT AND SERVICE CHARGE CHART

AMOUNT	MONTHLY PAYMENT	SERVICE CHARGE
Bal. up to 5.00		.10
5.01 to 15.00		.15
15.01 to 25.00	5.00	.30
25.01 to 35.00		.45
35.01 to 45.00		.60
45.01 to 50.00		.70
50.01 to 60.00		.85
60.01 to 70.00	6.00	.95
70.01 to 75.00		1.05
75.01 to 80.00	7.00	1.15
80.01 to 90.00		1.30
90.01 to 100.00		1.45
100.01 to 110.00		1.60
110.01 to 120.00	8.00	1.70
120.01 to 130.00		1.85
130.01 to 140.00		1.95
140.01 to 150.00	9.00	2.05
150.01 to 160.00		2.20
160.01 to 170.00		2.35
170.01 to 180.00		2.45
180.01 to 190.00	10.00	2.55
190.01 to 200.00		2.70
200.01 to 210.00		2.80
210.01 to 220.00	11.00	2.90
220.01 to 230.00		3.00
230.01 to 240.00	12.00	3.10
240.01 to 250.00	13.00	3.20

AMOUNT	MONTHLY PAYMENT	SERVICE CHARGE
250.01 to 260.00	13.00	3.30
260.01 to 270.00		3.40
270.01 to 280.00	14.00	3.50
280.01 to 290.00		3.55
290.01 to 300.00	15.00	3.65
300.01 to 310.00		3.70
310.01 to 320.00	16.00	3.80
320.01 to 330.00		3.85
330.01 to 340.00	17.00	3.95
340.01 to 350.00		4.00
350.01 to 360.00	18.00	4.10
360.01 to 370.00		4.15
370.01 to 380.00	19.00	4.25
380.01 to 390.00		4.30
390.01 to 400.00	20.00	4.45
400.01 to 410.00		4.60
410.01 to 420.00	21.00	4.75
420.01 to 430.00		4.90
430.01 to 440.00	22.00	5.05
440.01 to 450.00		5.20
450.01 to 460.00	23.00	5.35
460.01 to 470.00		5.50
470.01 to 480.00	24.00	5.65
480.01 to 490.00		5.80
490.01 to 500.00	25.00	6.00
500.01 to 1500.00	5%	1.2%
Over 1500.00	5%	1.0%

The minimum monthly payment due will appear on your statement. This will remain the same each month unless additional purchases are made. Each time that you purchase, the monthly payment required will be increased or decreased in accordance with the balance shown on your statement that month.

You can save on Service Charges if you pay more than your required monthly payment.

**SPECIAL TERMS UP TO 36 MONTHS MAY BE ARRANGED FOR PURCHASES OVER \$400.00.**

Thus, in our problem, we must equate  $P$  dollars now to the aggregate of payments of  $R$  dollars made at the end of each of  $n$  periods in the future.  $R$  dollars one period hence is worth

$\frac{R}{1+i}$  dollars now,  $R$  dollars two periods hence is worth  $\frac{R}{(1+i)^2}$  dollars now, and  $R$  dollars  $k$

periods hence is worth  $\frac{R}{(1+i)^k}$  dollars now. Thus we have

$$P = \frac{R}{1+i} + \frac{R}{(1+i)^2} + \frac{R}{(1+i)^3} + \cdots + \frac{R}{(1+i)^n}$$

Now, we multiply each side by  $\frac{1}{1+i}$ , and subtract the resulting equation from the first equation:

$$\begin{aligned} \frac{1}{1+i} \cdot P &= \frac{R}{(1+i)^2} + \frac{R}{(1+i)^3} + \cdots + \frac{R}{(1+i)^n} + \frac{R}{(1+i)^{n+1}} \\ P - P \cdot \frac{1}{1+i} &= \frac{R}{1+i} - \frac{R}{(1+i)^{n+1}}, \end{aligned}$$

and this can be simplified to the following:

$$\frac{R}{P} = \frac{i}{1 - (1+i)^{-n}} = \frac{i(1+i)^n}{(1+i)^{n-1}}$$

This fraction,  $\frac{i}{1 - (1+i)^{-n}}$ , is tabulated in interest tables for various values of  $i$  and  $n$ . It is

known by several names, including "capital recovery factor", used by Eugene L. Grant in *Principles of Engineering Economy* (3rd ed.), and "annuity whose present value is 1", used in the interest tables of the *Mathematical Tables from Handbook of Chemistry and Physics* (Tenth Ed.).

**Question:** What is the effective rate of interest charged on a loan of \$1,000, when a total of \$1,060 is repaid in 12 equal monthly payments?

**Answer II:**

The formula required to answer this question is as follows:

Find the interest rate ( $i$ ) such that

$$\frac{1.06}{12} = \frac{(1+i)^{1/12} - 1}{i} (1+i)$$

The answer to this problem is 11.45 per cent per year.

This answer is based on the assumption that money is always earning interest so that the unpaid installments can be paid at interest at the same rate. This is the usual assumption in all such problems involving interest. Your emphasis on the words "simple interest" is not clear. Perhaps the schedule below may clarify the answer I have given you. In it I have shown that if you calculate interest on the unpaid balance of the loan at the rate of .91 per cent per month, the loan is repaid in 12 equal installments of \$88.33. Since the interest rate of .91 per cent is not quite exact, the figures show that there will remain an unpaid balance of \$.20.

Unpaid Balance	Interest	Paid on Principal
\$ 1,000.00	\$ 9.10	\$ 79.23
920.77	8.38	79.95
840.82	7.65	80.68
760.14	6.92	81.41
678.73	6.18	82.15
596.58	5.43	82.90
513.68	4.68	83.65
430.03	3.91	84.42
345.61	3.15	85.18
260.43	2.37	85.96
174.47	1.59	86.74
87.73	.80	87.53
.20		

*Question:* What is the effective rate of interest charged on a loan of \$1,000, when a total of \$1,060 is repaid in 12 equal monthly payments?

*Answer III.*

*Definition.* The principal  $P$  is the net amount of money *actually received* (which may or may not be the amount "borrowed," as we have just seen).

The amount  $A$  is the amount of money to be repaid.

1. *Merchant's rule.* The theory behind this is the following. The entire *principal* (see definition above) is assumed to earn simple interest during the life of the debt; this interest is credited to the lender. Each partial payment is likewise assumed to earn the same interest, from the date of its payment to the date of final settlement; this latter interest is credited to the borrower.

Let  $I$  denote the monthly installment that the borrower pays. Then at the end of the loan, the lender has accrued

$$I[(1 + (n-1)i + (1 + (n-2)i + \dots + (1 + i) + 1]$$

and the principal has become  $P(1 + ni)$ . Setting these equal and solving for  $i$  gives (in this formula,  $I$  have used  $i$  = *yearly rate*, and  $n$  = number of *months* of payment)

$$i = \frac{24}{n} \frac{nI - P}{2P - nI + I}$$

Thus,

$$(a). i = \frac{24}{12} \frac{60}{1880 - 1000 + 83.33} \times 100 = 12.45\%$$

$$(b). i = \frac{24}{12} \frac{60}{2120 - 1060 + 88.33} \times 100 = 11.66\%$$

NOTE: This formula can be adapted to installment buying, and is sometimes so used. Here,  $(nI - P)$  = "carrying charge" =  $K$ , and  $P$  = price of article minus down payment (i.e., unpaid balance) =  $U$ ; and we get

$$i = \frac{24K}{U(n+1) - K(n-1)}$$

2. *Constant ratio method.* Here, the theory is the following. Each partial payment is made up of principal repayment and interest repayment; the ratio of these two quantities in each installment is constant, and equal to the ratio of the original principal to the total interest to be paid. On this assumption, with the notations as is 1., we find

$$i = \frac{24}{(n+1)P} \frac{nI - P}{P}$$

Thus,

$$(a). i = \frac{24 \times 60}{13 \times 940} \times 100 = 11.78\%$$

$$(b). i = \frac{24 \times 60}{13 \times 1000} \times 100 = 11.07\%$$

NOTE: For installment buying, this leads to  $i = \frac{24K}{(n+1)U}$

3. *United States rule.* This rule has the legal sanction of the U.S. Supreme Court. The theory behind this is the following. Each partial payment must be first used to pay the interest on the outstanding debt accrued from the date of the previous payment; the excess of this partial payment over the accrued interest is then used to reduce the outstanding debt. (This is sometimes called paying interest on the unpaid balance only—calculation based on the resulting outstanding debt.)

Letting  $D_2$  = denote the remaining debt after the 1<sup>th</sup> payment,  $i$  = interest rate per unit time,  $n$  = the number of units of time for the loan,

$$D_1 = P - (I - P_i) = P(1 + i) - I$$

$$D_2 = D_1 - (I - D_1 i) = D_1(1 + i) - I = P(1 + i)^2 - I(1 + i) - I$$

$$D_n = 0 = D_{n-1}(1 + i) - I$$

and therefore,

$$P(1 + i)^n = I \frac{S_{n/i}}{n/i}$$

( $\frac{S_{n/i}}{n/i}$  is found in any handbook containing interest tables)

Two remarks are in order:

REMARK 1. It is unfortunate that finding  $i$  from this equation is not simple at all, and is a trial and error process. However, one can determine  $I$  in case the interest to be charged is known, and in this way determine what the total repayment should be (so that one can find the "service charge"). Thus, in case (b) with  $i = 6\%$ /year and  $n = 12$ ,

$$I = \frac{1000 \times (1.0616)}{12.3356} = 86.03/\text{monthly}$$

Thus, the total payment is  $(86.03)(12) = 1032.36$ ; pocketing 1000, the person should pay back 1032.36.

If, on the other hand,  $i = 12\%$ , the analogous calculation for the same case leads to a "service charge" of 66.33.

REMARK 2. If the *monthly* interest rate is quite small (say  $-.01$ ) then it can be shown mathematically that the Merchant's rule will give a very close approximation to the interest rate under the United States rule. As far as this writer knows, there is no general formula giving  $i$  explicitly in terms of  $P$ ,  $R$ , and  $n$ , so that to solve for  $i$ , one must use a method either of successive approximations, or of interpolation in interest tables, the latter of which is illustrated below.

Coming back to the problem posed at the beginning of this paper, we see that  $P = \$1,000$ ,  $R = \frac{\$1,060}{12} = \$88.33$ , and  $n = 12$ , the basic period being one month. Thus

$$\frac{R}{P} = \frac{1,060}{12 \times 1,000} = 0.08833, \text{ so we must solve for } i \text{ in the equation, } 0.08833 = \frac{1}{1 - (1 + i)^{-12}}.$$

Referring to the table of "annuity whose present value is 1" in the *Handbook of Chemistry and Physics*, we see that  $\frac{0.0075}{1 - (1 + 0.0075)^{-12}} = 0.08745$ , while  $\frac{0.01}{1 - (1 + 0.01)^{-12}} = 0.08885$ . The

relationship between  $i$  and  $\frac{i}{1 - (1 + i)^{-12}}$  is approximately linear over this range, so we may

interpolate between these two values, and we get  $i = 0.00907 = 0.907\%$  per month. This is equivalent to a *nominal* rate of  $(12)(0.907\%) = 10.9\%$  per annum, and an *effective* rate of  $(1.00907)^{12} - 1 = 11.5\%$  per annum.

#### Reference:

Eugene L. Grant, *Principles of Engineering Economy* (Third Edition). New York: The Ronald Press Company, 1950.

Chapters 3, 4, and 5 of this book contain an excellent discussion of the theory needed to solve interest-rate problems, along with many numerical examples.

Example 21, page 61, is a problem almost exactly the same as that solved in this paper, the only difference being that in Example 21, the monthly payments are

$$\frac{\$1,070}{12}, \text{ instead of } \frac{\$1,060}{12}.$$



The problem is greatly complicated by the different types of transactions of varying terms on which the length of time for repayment may change with subsequent transactions added to an account. In fact, due to numerous and unpredictable variables, it is impossible to calculate in advance the annual rate of charges on a particular transaction which becomes involved with other items in an account balance. There is a considerable number of formulae that can be used to calculate a simple interest rate. All are complex in their application and any attempt to apply them to individual transactions would be at the least difficult and costly, if not impossible.

It is doubtful whether many existing forms of retail credit could be continued at all if a percentage rate computation were mandatory. It is neither fair nor reasonable to relate the cost of a credit service to each transaction in terms of simple interest because the cost to the retailer of borrowing money represents only a fraction of the total expense incurred in extending retail merchandising credit. There are certain basic and fixed expenses in connection with all retail credit transactions that do not change appreciably with the length of contract and do not depend directly on the amount involved. To relate these relatively fixed charges to short-term credit or to comparatively small transactions in terms of simple interest is incorrect and misleading.

Imposition of unreasonable and unrealistic requirements might and probably would bring strong pressure upon merchants to include credit costs in the cost of merchandise. In view of the important place that consumer credit has in our economy, it would be unwise to impose operating restrictions that could make it virtually impossible to carry on existing forms of credit developed to meet the requirements of consumers. Conversely, the proposals in the bill could drive credit charges under ground and completely obscure the real dollar cost of these services to the credit purchaser.

The present disclosure of the dollar cost of credit services as practised by many retailers is a satisfactory protection to the consumer against high finance charges, since the cost of the credit in dollars is shown. At the risk of repetition, we stress that legislation designed to enforce the showing of a so-called "simple" annual rate for such charges could lead to confusion, inaccuracies and deception. It would be practically impossible to administer and would eventually lead to increased costs to the consumer.

The primary object in retailing is the sale of merchandise. Credit is one of the tools that assist the retailer in obtaining this primary objective. It is partially a service to the customer and partially an assistance in moving merchandise. Existing forms of retail credit may be divided into two classifications. One is the charge account—a form of short-term credit where no service or other charge is involved except where store policy may require some small charge as a penalty for late payment. The other is the various types of accounts designed to spread the customer's payments for merchandise over periods of time, thus involving some service charge.

Today the types of retail credit accounts are tending to change and become more flexible. For example, one relatively new type of account may be employed for periods as a charge account without any service charge and at other times as a short or longer term instalment account.

It is that type of account, sir, that is represented by that bill that I gave you.

The CHAIRMAN: Yes.

Mr. NELSON: Retail firms now employ a considerable variety of credit accounts involving some sort of service charge, and the newer forms have been developed to meet the changing needs of our society and economy.

Practice, of course, varies widely in a trade as large as Canadian retailing. We have noted, however, a growing tendency on the part of retailers to

supply quite specific information to their credit customers. This involves not merely details of purchases and credits but information regarding the dollar cost of the service charge.

We would, therefore, respectfully recommend that it be recognized that the interest disclosure requirement of Bill S-25 insofar as retailers are concerned is simply impractical and that the disclosure of the money cost of retail credit transactions according to present trade practices be accepted as being fully adequate to inform the purchaser of the cost of the credit service involved in retail instalment purchases.

All of which is respectfully submitted on behalf of the Canadian Retail Federation.

The CHAIRMAN: Are there any questions?

Senator ROEBUCK: On page 2 of your memorandum in the middle of the second full paragraph there are the words:

Conversely, the proposals in the bill would drive credit charges underground and completely obscure the real dollar cost of the services to the credit purchaser.

What do you mean by "drive credit charges underground"?

Mr. NELSON: There are two ways, sir, in which a retail company may recoup the cost of its credit granting. One is to relate to each credit purchase some charge which in the trade is known as a service charge. The other is to so price all the merchandise in the store so that it is sold at a price which in the overall operation recoups all of the expenses.

Senator ROEBUCK: That is, to increase the price at which the goods are quoted?

Mr. NELSON: Yes.

Senator ROEBUCK: In that case the customer who is comparing values would be able to say that in one store it would cost him \$10, say, and in another store \$11?

Mr. NELSON: Yes, provided one gave credit and the other did not.

Senator ROEBUCK: So that does not do the purchaser any harm, if that is what you call driving it underground.

Mr. NELSON: It varies with stores.

Senator ROEBUCK: It conceals the fact that the purchaser is paying so much in interest, but it does not conceal the fact that one price is higher than the price in another store, and that would be evident to a person such as Mrs. Wilson who is looking over the various prices.

The CHAIRMAN: Except, senator, if it became prevalent. I gather that is what the witness was indicating in his brief. What you say would be correct if one concern did this, but if the practice got recognition on the basis of operation, where the price included all these factors, and all the stores which were giving credit followed that practice, then it would be a different situation.

Senator ROEBUCK: The store that was giving credit would soon begin to feel the pinch.

The CHAIRMAN: Yes, if people were prepared to pay cash. They could always make a good cash deal, I would say.

Mr. NELSON: This applies in varying ways. If one store puts in an escalator which costs a quarter of a million dollars—and escalators do cost that much, I understand—that must be paid for by the customers of that store. If another store does not put in an escalator—and, of course, all stores do not put them in—that fact might be considered to be reflected in the prices. Whether or not it is in practice, I cannot say.

Senator WALL: I wonder if I could ask the witness a question. The first full paragraph on page 2 reads as follows:

It is doubtful whether many existing forms of retail credit could be continued at all if a percentage rate computation were mandatory. It is neither fair nor reasonable to relate the cost of a credit service to each transaction in terms of simple interest . . .

And this is the part that interests me:

. . . because the cost to the retailer of borrowing money represents only a fraction . . .

Now we are having the loan principle involved here.

. . . represents only a fraction of the total expense incurred in extending retail merchandising credit.

The phrase "only a fraction" is very loose and very general. What does that word "fraction" mean? Does it mean 25 per cent, 50 per cent, 75 per cent or 80 per cent? What is a fraction?

Mr. NELSON: Perhaps I could give an approximate example, Mr. Chairman. I think the previous witness mentioned  $1\frac{1}{2}$  per cent a month on a revolving credit outstanding balance. The cost on the basis of borrowing money at, say, 6 per cent would obviously be much less than  $1\frac{1}{2}$  per cent per month—that is, if it was borrowed from the bank, it would be perhaps a half of 1 per cent per month. So, there is a 1 per cent spread made in the charge by the store, if the borrowing was from the bank.

Senator WALL: But he may be borrowing his own money.

Senator BRUNT: How could he borrow his own money?

Senator WALL: He is lending his own money—I stand corrected.

Mr. NELSON: If he uses his own money he is deprived of it for the purpose of putting merchandise into the store.

Senator ROEBUCK: He has a right to interest on his own money.

Mr. NELSON: Certainly. The balance of this 1 per cent in this case—and I am trying to answer the particular question asked, with respect to the small percentage—the bulk of the cost is made up in the actual operations of the credit department, where various costs are incurred by the store in credit transactions. These are very considerable. I could arrange for any honourable senators to visit a typical credit department, and I am sure you would be impressed by the great number of people who are employed there, the expensive machinery used and all the other costs involved. So, the portion of cost to the consumer which is represented by the merchant's cost in money, is relatively small.

Senator WALL: But that is the cost of the loan, however you dress it up. These people who are making up accounts, checking and tabulating are all part of the machinery for extending the loan, and therefore these are charges on the loan.

The CHAIRMAN: But Senator Wall, all the witness has said is that when you put the total cost together, the cost of the money is a small fraction of it.

Senator WALL: Yes. I am trying to establish something else.

Mr. NELSON: Perhaps I misunderstood you.

Senator CROLL: If there are no more questions, I would ask for the opportunity to look at the exhibits—which I have seen only briefly—and the very knowledgeable brief we have here; at the same time, I want to reserve my right—now that we have satisfied the gentlemen on the hearing—to recall them at a later time.



The CHAIRMAN: I see no objection to that, if it becomes necessary to do so. If there is any preparation you want the witness to make, you might indicate it to him.

Senator CROLL: I want to do two things: look over the brief carefully, and examine the exhibits. It is quite possible that I may want him back; therefore, I give notice now that the chairman ask him back, if his presence is requested.

The CHAIRMAN: Any witness the committee wishes to have, the chairman will be happy to invite.

Senator CROLL: It is difficult to follow this material in the brief, unless one is in the retail business.

The CHAIRMAN: I would suggest that if there is any particular preparation you want him to make on his return you should indicate it to him before that time; or, do you want a straight cross-examination at that time?

Senator CROLL: I will give him as much notice as he gave us that Mr. Varcoe was coming to give a legal opinion.

The CHAIRMAN: I will protect the witness in those circumstances.

Senator PRATT: Mr. Chairman, it seems we are very much confused with respect to the cost of extending credit. We use the word "loan", and omit the word "credit". In the ordinary course the extending of credit is entirely different from the granting of a loan.

May I ask a question with respect to the costs involved of extending credit for say \$100, \$200 or \$800? Is it not possible to arrange a ratio of costs that one can compare right down the line for the extension of credit?

Mr. NELSON: Normally, when these tables are printed and included in mail order catalogues and similar documents, I believe they show that the cost per dollar of purchase shrinks as the amount increases. The fixed charges are largely the same in terms of physical effort and investment and that sort of thing for a very small amount of credit as for a substantial one.

Senator ISNOR: Mr. Nelson, your organization represents small, medium sized and large retail organizations.

Mr. NELSON: That is correct, sir.

Senator ISNOR: The percentage of each does not matter for my question. Would not the requirements of this bill, S-25, place a hardship on the small or medium-sized retailer as compared to the large organization which has these computing machines and so on?

Mr. NELSON: I suppose that the less mechanized the operation is, the more difficult it would be.

Senator ISNOR: It would be treated somewhat in the same manner as a loss leader is carried by the large stores.

Mr. NELSON: I am sorry I did not follow that question.

Senator ISNOR: Perhaps that is not the best illustration. However, you do admit that it would be a handicap in so far as the smaller retailer is concerned.

Mr. NELSON: I think the computation would be difficult for all retailers, and I think it would be increasingly difficult for the smaller ones.

Senator BRUNT: It would create a lot more work for the man who had to work it out by hand.

Mr. NELSON: Yes.

Senator CROLL: I thought there was an unemployment problem in this country.



Senator BRUNT: Do you think the people who are unemployed can work out these formulas?

Senator CROLL: Yes. You are losing your sense of humour.

Senator CAMPBELL: Has it not been the practice of all retail merchants, particularly in recent years since credit has been so generally extended to the public, to attempt to work out the dollar cost of these credits and disclose it on the account?

Mr. NELSON: I think that is good retail practice, sir.

Senator CAMPBELL: Your particular objection to the bill is that it would be almost impossible to relate these charges to a simple annual interest rate.

Mr. NELSON: May I illustrate that, Mr. Chairman? Retail stores that give a revolving credit account, I think, normally make it quite clear that the basis of charge is  $1\frac{1}{2}$  per cent—these may vary, but that is a standard one—on the outstanding balance, that is the balance at the end of the previous month.

Here the store has no hope of informing the cost of the amount of the rate of interest in a percentage amount. In a revolving credit account the purchases are made normally at various periods during the month. Under the present practice, I admit it is rough justice, but that is  $1\frac{1}{2}$  per cent applied to the lump sum of purchases during the month.

Now, we do not mind telling people that this is one and a half per cent, but to relate this one and a half per cent to the purchases made all during the month, what would happen is that you are paying slightly more for the purchase made at the end of the month and slightly less for those made at the beginning. But it is not a precise calculation, it is approximate. It is current practice to release this one and a half per cent information, but our problem is how to relate this in practical terms. In the same sort of case I have illustrated with that bill, I may purchase something at a value of say \$100, and on the table in the back it will show that I pay so much a month for a given number of months. If I do not anything more that remains constant, but the whole basis of the transaction is changed if I pay more in or if I add to the account. We would then tell the consumer there is an X-rate of interest attached to the purchase but that is changed the moment an additional payment is made or an additional purchase is made. Now, Mr. Chairman, these are mechanical difficulties. We are not worried about the principle involved.

Senator BRUNT: Mr. Chairman, I have a question: Would this bill apply to a margin account at a stockbroker's?

Mr. NELSON: I cannot answer that.

Senator BRUNT: Would some expert please answer that for me?

The CHAIRMAN: I think the one who should answer it is the person who presented the bill.

Senator CROLL: You did not allow me to present my case first, you insisted at knocking it down by opposition, but if you had allowed me to present it I would have presented it fully.

The CHAIRMAN: My friend is still weeping at the chairman.

Senator CROLL: I am not weeping but the kind of treatment I have been given is not the kind of treatment I give other people.

The CHAIRMAN: You are getting good treatment.

Senator CROLL: But it is not the kind of treatment I give other members of the Senate in situations like this.

Mr. POWER: Answering Senator Brunt's question, Mr. Chairman, the brokers will look after that.

The CHAIRMAN: Are there any other questions.

Mrs. Ross, have we time to hear you now?

Mrs. D. L. Ross: Mr. Chairman, I feel fully convinced that the information I have to put before this committee deserves serious consideration from all of you, and I am willing to return after lunch.

The CHAIRMAN: I do not want to rush you in a presentation because that is not fair.

Senator CROLL: Mr. Chairman, you have to speak in the Senate at 3 o'clock. If we adjourn and come back at two, I think in about 45 minutes Mrs. Ross will have got her case on record and 15 minutes will be enough to make the last touches on your speech, I am sure.

The CHAIRMAN: I am a little suspicious when Senator Croll becomes so considerate about the quality of my speech this afternoon.

Senator BRUNT: Could we take 10 minutes to hear Mrs. Ross now, in part?

The CHAIRMAN: No, that would not be fair. We will resume at 2 o'clock.

—On resuming at 2 p.m.:

The CHAIRMAN: Gentlemen, there being a quorum the meeting will begin.

Mrs. D. L. Ross, Chairman of the Family and Child Welfare Division of the Canadian Welfare Council, has a presentation to make. Mrs. Ross, we shall be glad to hear you.

Mrs. Ross: Mr. Chairman, and members of the committee: One of the major functions of the Canadian Welfare Council is to act as a national clearing house for public and private social agencies and other individuals and organizations interested in social welfare. It is recognized as the national voice of these interests. The Family and Child Welfare Division of the Council specifically represents those members of the Council whose primary concern is with the welfare of families and children.

We are appearing before the Senate Committee on Banking and Commerce to speak on behalf of these groups in support of the intent of Bill S-25. We think that provisions contained in this Bill will be helpful to people who must purchase on credit or make small loans in order to obtain the necessities of life. We believe that it is their right to have full information about what their total indebtedness will be, and that the costs should be expressed in simple terms which they can understand. We also believe that the provision of this Bill would be a valuable addition to existing legislation about small loans, making it more effective. The legislation contemplated here would assist in the needed regulation of the operations of some lenders, while for others it would serve to endorse their practices.

Our members recognize that credit buying and borrowing are not harmful in themselves; in fact, the use of consumer credit can be most helpful to many people who have no other way of acquiring the durable goods necessary to family living on the level of acceptable Canadian standards. The judicious use of credit helps to maintain employment in the industries concerned. In this way credit buying is of real value to the whole Canadian economy.

The agencies we represent are fully aware that credit can thus be used constructively and is an important factor in stimulating the production of consumer goods. However, their experience clearly shows that there are many people who encounter problems of indebtedness which they are unable to solve without guidance or assistance from some outside source. Either through lack of understanding or unwise borrowing, the individual frequently finds that his indebtedness is beyond his capacity to discharge within the terms of the contract. Newcomers to Canada, frequently with an inadequate command of

the languages of Canada, are particularly vulnerable to misunderstanding and need very clear knowledge of what they are doing in acquiring their necessities through these means.

The pressures to meet the payments on the individual's debt are insistent and clamorous. Frequently he meets the payments to the extent he can at the expense of inadequate family diets and the neglect of proper attention to the health needs of his family, such as dental and medical care. Nor can he discharge his obligations incurred through credit buying by cancellation of the contract with return of the articles he purchased. He may lessen his debt by this means, but all too frequently he finds himself still debt ridden and without the article which may have been important, if not an outright necessity, to him and his family.

The tensions and anxieties which may be built up in families who face an indebtedness beyond their capacities is a contributing factor in threatened and actual family breakdown in many cases, as the experience of the social agencies testifies. The agencies inform us that indebtedness is the primary problem in from 10 to 20 per cent of their caseloads, and an important factor in many more. In fact, one major agency has reported that problems of indebtedness occur in 40 per cent of its caseload. Almost all the agencies from whom we have heard in connection with this meeting, report that it is quite clear that almost invariably their clients with debts had no idea when they entered into negotiations what the real costs would be. In many cases they either did not know or did not understand that costs included fees and other service charges, in addition to the interest on their loan or purchase contract.

We are appending some true case stories to illustrate the experiences of some of these families. It is obvious from these examples that while in some cases problems arise from human weakness which has led people to purchase far beyond their ability to pay, in others the unexpected proliferation of fees, charges and discounts has increased the debt burden far beyond the individual's ability to carry it.

The Canadian Welfare Council has long been concerned with the problems of people in debt. As early as 1945 the Council made a submission on The Regulation of Instalment Sales and Purchases to the Dominion-Provincial Conference of that year, in which we included a suggestion that a full and clear statement of all charges be made at the time of purchase. Naturally, we are pleased that Bill S-25 covers the point we made at that time, and carries it an important step further.

The amendments to the Small Loans Act in 1956 brought about major improvements in lending practices. Unfortunately, as it would appear, the provision of the amendments limiting charges to a definite percentage of the principal are largely frustrated by the fact that fees and charges are not expressed as a percentage of the principal by the seller or lender, if at all. Unless this is done it is difficult to see how the Small Loans Act can be adequately enforced. Indeed, it seems apparent that such charges may only be a means by which some organizations in this field circumvent the legislation which, as the Honourable Senators well know, limits interest and other charges to a definite percentage of the principal.

We believe that the proposed bill will:

- (a) help to protect people from excessive debt by giving them information in advance about how great their debt will actually be, and
- (b) make the provisions of the Small Loans Act more effective.

Though it is not the whole answer to the problem we urge the passage of the Bill as an important move in the right direction. We hope also that the Senate will consider at the next session other urgent aspects of the problem, such as the practices involved in repossession.



## APPENDIX TO THE MEMORANDUM

From the Family & Child Welfare Division, The Canadian Welfare Council.

## COMMENTS AND CASE ILLUSTRATIONS FROM MEMBER AGENCIES:

1. The debt problems in many families arise from the fact that they do not realize that charges are computed monthly and therefore when they believe that a specific loan has been repaid, or an article paid for, they find they have a substantial amount still to pay because of the interest charges. The experience of this agency is that information about the balance due, particularly with small loan companies, are never given unless the customer specifically requests it.

2. The missing of regular monthly payments, sometimes due to seasonal lay-offs, illness or other debts, often lead to refinancing of loans with a resultant sharp increase in interest rates or repossession which leaves the individual with a substantial proportion of the debt but none of the goods for which it was incurred.

3. Due to rapid depreciation of the value of some goods, plus high carrying charges, some people find within a comparatively short time after goods have been purchased that they owe the finance company a sum of money greater than the current value of the goods. In one case a family had purchased a quantity of furniture including a television set. The purchase was financed in such a manner that the customer had signed the promissory note in favour of a finance company. The purchase price of the goods was \$1,028, carrying charges added at the time were \$443.00, bringing the total to over \$1,400.00. Monthly payments were \$50.00 a month. After making eight monthly payments and then falling three months behind due to unemployment, the customer found that the debt began to mount rapidly. For the three months where payments were missed, a further \$276.00 in interest charges were added, thus the payment of \$50.00 per month did not quite cover the interest on the note. Legal advice was sought, but it was learned that the family could deal with this debt only by making payments as required. Repossession of the furniture would have altered the situation very little because of its small value after a few months of use.

4. A young couple, both under 25, with three children, came to the agency because of debts totalling over \$4,000.00, including loans from two finance companies and a home improvement loan from a bank. Their current monthly expenses are high because the man's job involves driving his own car and though he has a good job, his monthly payments on his debts almost equal his weekly salary.

5. In fifteen years of helping families with debt problems, I have never known a family who was able to tell me their rate of interest or their present balance due. The pressure from loan companies was often so great on a large number of these "poor risks" that money required for basic necessities was used to make payments on loans and the agency was then asked for help with groceries, clothing and rent, which actually meant that we were paying the loan companies.

6. A couple with four children came to an agency for help because they were unable to manage their finances owing to the substantial debts they had incurred. They owed approximately \$3,500.00, almost entirely as the result of having had to buy a home in order to have a place in which to live. The husband's take-home pay averaged \$300.00, but the monthly payments to which he was committed exceeded his total wage by more than \$50.00 a



month. This couple is happily married, but there has been great stress upon the marriage as a result of excessive worry surrounding this impossible financial load.

7. In this case a major creditor was a finance company to whom the family had been making payments of \$104.00 per month in connection with a mortgage loan. The loan had been for \$2,600 plus \$1,000.00 interest. When we approached the finance company they agreed that the loan could be refinanced with a reduction in monthly payments of approximately \$25.00, but to do so they required an additional \$1,000.00 in interest.

8. In another case the man is regularly employed, but was referred to an agency for help by the family physician because the wife had been admitted to the hospital suffering a nervous breakdown which the doctor ascribed to worry over the family's indebtedness.

9. A family came from Germany under immigration plan in 1957. He was an electrician in Germany but has not got his Canadian papers, so work was hard to find, and wages low. He now has steady employment but there are always several months in the winter when he is off due to seasonal unemployment. There are 4 children.

In their efforts to get established the family bought all their furniture including stove and frigidaire on time. When the husband was out of work in the winter 1959-60 and family on Unemployment Insurance, the furniture was repossessed, sold, the family held liable for the difference of \$308.00. This bill was put in the hands of a collection agency who pressed family for payment or threatened garnishee. They state that had they understood the situation, they would have made some arrangements to keep up reduced payments so furniture would not have been taken. They are now paying a small amount each month to the collection agency, arranged through Family Service Centre. As they also still owe Dept. of Immigration \$400.00 this is a heavy burden to a family of six with an average wage of \$45.00 a week.

The CHAIRMAN: Mrs. Ross, one question occurred to me while you were reading your brief. At the bottom of page 3 you speak of certain amendments to the Small Loans Act in 1956. The effect of that amendment was to require that the cost of a loan should not exceed in the aggregate two per cent per month of any part of the unpaid balance, one per cent of the unpaid balance exceeding \$300, but not exceeding \$1,000, and one-half of one per cent of any remainder up to \$1,500. That cost of loans there means the entire cost of every conceivable kind and it is expressed in terms of percentage. That is the thing you approve of in your brief. Expressing the total charges as a percentage is the way you think it should be done, and that is the way the Small Loans Act does it.

Mrs. Ross: Yes, Mr. Chairman, I understand that point, but frankly I am not sufficiently acquainted with the Small Loans Act to be able to answer any questions you have to ask, or at any rate answer them with any measure of authority, and therefore with your permission I would call on Miss Burns or on Mr. Smit. I am sorry I do not have sufficient knowledge of the technical aspect of the subject.

Mr. SMIT: Under the Small Loans Act it is provided that total charges shall not exceed a certain percentage, but unless there is a requirement that all such charges be expressed as a percentage of principal one wonders how that can be enforced. It is our experience and the experience of all our agencies that not all charges are expressed in terms of percentage.

The CHAIRMAN: If they are not, then the act has been violated.

Mr. SMIT: We are not enforcing it.

The CHAIRMAN: What a person is required to do under the bill that is before us is to set forth in writing the total amount of finance charges in a percentage relationship expressed in terms of simple annual interest. Is not that the same thing you have under the Small Loans Act?

Mr. SMIT: Yes, and that is what we would like to see made effective because our information from our agencies is that it is not in fact the case.

The CHAIRMAN: Do you think you will make enforcement effective by passing another law which does the same thing? Does that improve the administration?

Mr. SMIT: You have more teeth in Bill No. S-25. In this case it becomes a criminal offence.

The CHAIRMAN: The only "teeth" in the Small Loans Act is the fact that if they do not observe the limitation of the clause they are guilty of an offence and liable on some summary conviction to a fine not exceeding \$1,000 or imprisonment for a term not exceeding one year, or to both fine and imprisonment. That is a fair penalty.

Mr. SMIT: I would agree with that.

Senator WALL: The Small Loans Act covers only a mere part of the field.

The CHAIRMAN: That is all. I specifically referred in the brief to the paragraph that had reference to the Small Loans Act, so that there was no confusion between Mrs. Ross and myself, nor was there any confusion between Mr. Smit and myself. I am sorry, Senator Wall, but if there is any confusion it must be between you and me.

Senator CROLL: All Senator Wall said was that it was a minor portion of the field. The abuses were above the Small Loans Act coverage.

The CHAIRMAN: To the extent that this brief deals with the Small Loans Act, the observations made are pertinent.

Senator LEONARD: Has Mrs. Ross seen a copy of the statement which was put in evidence this morning by Mr. Nelson? If she has not, I wonder if she would look at it and tell us whether she has any comments to make as to whether it supplies sufficient information concerning the charges in connection with that kind of thing. Perhaps, Mrs. Ross, you would look at the statement with reference to the balance owing and certain sales that have taken place during the month and certain payments and then the statement on the back showing how the service charge of \$1.45 is arrived at by relating it to all kinds of balances from \$5 up to \$1,500.

Mrs. Ross: First of all, I might be permitted to refer back to the balance due of \$114.55 and payment due, and monthly instalments of \$8.

Senator LEONARD: Is there any objection to that kind of disclosure of what the charges are?

Mrs. Ross: I should think not, sir. In the great majority of cases I think perhaps that we in the welfare field are concerned to a great extent with people who do not understand these things.

Senator LEONARD: They have no understanding of the transaction.

Mrs. Ross: Exactly. It could be explained to them by anyone who would take the trouble to sit down and tell them what it is all about.

Senator LEONARD: It is a different kind of selling or borrowing that causes the trouble?

Mrs. Ross: Yes.

The CHAIRMAN: Can you give us an illustration? What is the type of selling or borrowing that you most frequently come in contact with, which provokes some of these problems?

Mrs. ROSS: To a great extent, sir, it is the fact that people in this country want to enjoy the good things of life, perhaps some of the things that they cannot afford to have, and I think we must admit that it is a tendency in our present society to encourage them to get these things so that they feel they should have them—and I am not saying that they should not have them. To me, however, it is an exceedingly grave problem and something which I should think concerns every one of you gentlemen as well as ourselves—those of us who are actually working in the field in a professional capacity or volunteering their service as I am. I feel it is basically wrong, and I can assure you that we feel very strongly when we find children and wives neglected by men who cannot help them for the simple reason that they are trying to carry out their commitments after having been encouraged to get things on credit. People are encouraged in all sorts of ways to buy things. All our advertising has that end for its purpose, and that is, one might say, our way of life today.

The CHAIRMAN: It is a large problem.

Mrs. ROSS: Of course it is, but we think there are some places where perhaps we can make a beginning in some slight way to assist people.

Senator BOUFFARD: Would you be in favour of putting a stop to the advertising of merchandise?

Mrs. ROSS: Certainly not, but the fact remains that people are encouraged to buy things. I am aware of that, and it is part of our way of living. A great many of the people we come in contact with come to us because they are desperate and need some help.

Senator BOUFFARD: Is it not a matter of education, whereby people ought to be taught not to buy more things than they can pay for?

Mrs. ROSS: It is largely a matter of education, I agree; but who will do the educating? We have to make a start somewhere.

Senator HORNER: On page 3 there appears this statement in the last paragraph:

The amendments to the Small Loans Act in 1956 brought about major improvements in lending practices. Unfortunately, as it would appear, the provision of the amendments limiting charges to a definite percentage of the principal are largely frustrated by the fact that fees and charges are not expressed as a percentage of the principal by the seller or lender, if at all. Unless this is done it is difficult to see how the Small Loans Act can be adequately enforced.

Have you any knowledge of cases where the Small Loans Act was violated? If so, did you ever try to report such cases?

Mrs. ROSS: There is a great deal of credit buying that does not come under the Small Loans Act.

The CHAIRMAN: What the senator is talking about, Mrs. Ross, is the paragraph in which you make reference to the Small Loans Act and he is asking you about that, not about the rest of the field.

Senator HORNER: It would appear that there are, in your opinion, cases where the act has been violated by circumvention.

Mrs. ROSS: Yes.

Senator HORNER: You have not undertaken to report these practices to the proper authorities?

Mrs. ROSS: No, I must admit that. In these comments we have made, we have not given you any specific case under the Small Loans Act.



The CHAIRMAN: The senator is asking whether in any case where you have discovered that the act has been violated you have reported it to any authority.

Mr. SMIT: Mrs. Ross' organization, as you will note, is a membership agency and the individual agencies in our group may or may not report cases. They would not necessarily report to us.

These are case illustrations we have given you which we have received from agencies and we would infer from the information that there have been violations, and it is quite possible that the Small Loans Act has not been sufficiently well known across Canada for action to be taken. I venture to say that action has not been taken in a number of cases where the act has been in fact violated.

Senator ROEBUCK: Do you look upon yourselves as a law-enforcement agency?

Mr. SMIT: No.

The CHAIRMAN: Where there are violations, you can hardly complain about them if you do not take action.

Senator ROEBUCK: The agency does what it can to help the individual. It is not the agency's job to go after somebody else and put that person in jail or have him fined.

Senator FARQUHAR: When these cases come to the welfare council the people are in an almost helpless position. I suppose every senator here has probably had the experience that I have had in their relations with these people. When they get into a hopeless position and you try to help them, you figure out how much money they have coming to them and how much their indebtedness is, and you find sometimes that they simply have no income to meet that indebtedness.

I think the finance companies are to blame to some extent in that they really coax people to undertake obligations. They almost invite people to come in and borrow money, making it appear quite easy; but they do not tell people that the two per cent is a monthly charge which, when you multiply by twelve, produces 24 per cent. These people pay these high interest rates and it is really cruel because a great many of them are young people who have had no experience in business. I do not know what can be done.

The CHAIRMAN: This rate of two per cent is the one that Parliament fixed.

Senator FARQUHAR: It is still too high. Some of us did try to get it lower.

The CHAIRMAN: We in the Senate dealt with it in 1956, as you will recall.

Senator FARQUHAR: Yes, and we had the heads of the finance companies here. At that time I told them they were not fair to these people.

The CHAIRMAN: May I say to Senator Roebuck that I was not putting any blame on this organization for not doing this, that or the other thing; but there are two problems we have to face, and one is the problem the organization has to deal with. People come to them in a desperate plight, and I should like to say to Mrs. Ross in this connection that the organization is doing an excellent job in trying to work things out for these unfortunate people.

On the opposite side, however, we have a law and if there are violations of that law there is no use providing penalties unless somehow, somewhere, where violations are flagrant, somebody takes action.

Senator ROEBUCK: But these are not the people to do it. A good deal of the work done by organizations of this kind is diplomatic. They go to these finance companies when someone has violated the law and they make some



kind of compromise which helps poor people out and gets for the finance company the most they can obtain, squeezing the last drop of blood out of the stone. I take it, Mrs. Ross, that helping people in such circumstances constitutes a large portion of your work.

Mrs. Ross: That is right, senator. The welfare council has agencies across the country and these agencies are the people who deal with the problems—such agencies as those in Ottawa, or Vancouver, or Halifax. They are the people who deal with the problem.

Senator FARQUHAR: You are the people who know the facts and are in a position to report those facts.

Mrs. Ross: That is true. May I interject this, Mr. Chairman. I know that Miss Burns has something she wishes to say and she would like to have an opportunity to say it.

The CHAIRMAN: There are two matters I wish to clear up first, if I may. Can I have a motion for printing 800 copies in English and 200 in French?

—Carried.

The CHAIRMAN: I received in the mail a brief from The Canadian Chamber of Commerce addressed to me. I propose that we file a copy and make it part of the proceedings, and that copies be put in the mailboxes of the senators.

The brief reads:

#### THE CANADIAN CHAMBER OF COMMERCE

300 St. Sacrament Street

Montreal 1, Que.

July 11th, 1960.

The Honourable Salter A. Hayden,  
Chairman,  
The Standing Committee on Banking and Commerce,  
The Senate,  
Ottawa, Canada.

Dear Senator Hayden:

On behalf of the Executive Council of The Canadian Chamber of Commerce, I should like to place on record for the consideration of your Committee certain views with respect to Bill S-25, an Act to Make Provision for the Disclosure of Information in Respect of Finance Charges. We believe that the review of the Bill by your Committee is valuable and we hope that the following observations will be helpful in your examination of this proposed legislation.

#### Structure of The Canadian Chamber of Commerce:

The Executive Council is one of the governing bodies of The Canadian Chamber of Commerce which is the voluntary federation of more than 750 Boards of Trade and Chambers of Commerce in all parts of Canada. These Boards and Chambers are established to promote the commercial, industrial, civic and agricultural progress of the communities and districts in which they operate.

### Relevant Policy of The Canadian Chamber of Commerce:

The policy of The Canadian Chamber of Commerce states in part: "The Chamber believes that government activities should not involve detailed participation in the decisions of private business or competition by state agencies with private enterprise. It is opposed to all state interventions and controls beyond those clearly necessary to protect some accurately defined public interest".

### Comments on Bill S-25:

It is recognized that the intent of Bill S-25 may be to correct abuses that are sometimes to be found in the general field of credit. We question, however, whether the kind of regulation provided by Clause 3 (b) of Bill S-25, as presently drawn, is "clearly necessary" and also whether the clause is practical of application. Certainly such legislation would augment substantially the costs of operating many businesses at a time when the control of costs of doing business is so essential to the prosperity of Canada.

Moreover, it is our view that there is no widespread demand on the part of credit users for the type of information required by Clause 3 (b). Canadians using credit facilities, it would appear, are now satisfied to have their charges expressed in dollar amounts. The problem of disclosing charges varies from business to business and as among the various types of credit facilities and consequently the formulation of any hard and fast rule as to how to proceed in each case, would appear to be impractical.

There is the added point that expressing a service charge in a percentage relationship could result in reasonable charges being made to look exorbitant. In such cases, the vendor would tend to include his service charges in the general price of his goods and services. This would obscure rather than disclose service charges. Furthermore, any inclusion of service charges in the general price of goods and services would adversely affect the economy and be unfair to cash purchasers.

In summary, the requirements of Clause 3 (b) appear to be in response to no clear demand from credit users, would burden business with unnecessary and time-consuming operations and in view of the Council are impractical in character.

We have not addressed ourselves to the alleged constitutional problem involved in the proposed Bill but we have no doubt that this aspect will be given your full attention.

We would urge that the foregoing views be given full consideration by your Committee in examining Bill S-25.

Yours very truly,

(signed) D. L. Morrell,

General Manager.

Miss BURNS: On page 2 of the appendix, example No. 5, you will find the answer to the question why people do not report infringements of the Small Loans Act. This example, which I happen to know, comes from a woman who has worked as head of a sectarian family agency in three provinces. All this time she has never found anyone who came to her for help who knew what the interest was, and this is part of the problem the agencies are faced with—to find out whether or not the loan has been granted on terms that are within the act. This is one reason we feel strongly that something be done to ensure that the proper information is explicitly given at the beginning. That is the only way people can know whether the act is being infringed.

Senator ROEBUCK: When you get such a situation do you find it difficult to figure out what the rate of interest is and the charges made, knowing the amount of the debt?

Miss BURNS: It is a long time since I dealt with these people direct, senator, but I think the difficulty that does arise is that you rarely have anybody coming to you with this problem who has made the payments on any regular basis, and you find re-financing taking place, and what happens to interest rates then? If the Small Loans Act is infringed, many people blink at it because it is a known practice.

Senator HORNER: Your organization would only meet the difficulties of the people you deal with.

Senator BOUFFARD: In practically all of the cities in Canada there are lawyers' organizations who give advice for nothing. They take on cases.

Senator HORNER: Lawyer's advice for nothing?

The CHAIRMAN: You might have trouble getting that service.

Senator CROLL: What has been overlooked has been the fact that this bill has a built-in answer to the problem that has been raised. In section 4 you have a built-in antenna that they cannot recover if they have not complied with the act. It does its own policing. It is an amazing bill.

Senator WALL: On a point of clarification, the cases cited in No. 3 and No. 7 are interesting but they tell us nothing about the terms. Therefore it is difficult for me offhand to express a judgment. We have \$443 plus \$276, which is approximately \$720 on \$1,000. That is a terrific charge, but for how long? In other words, it does not tell me anything, though it looks very large. No. 7 is the same. If there were some indication of the term, the case would mean something and there would be some clarification of its import.

The CHAIRMAN: We are approaching a quarter to three, but I do not wish to shut Miss Burns off.

Miss BURNS: On the question of legal aid, Mr. Chairman, it should be clear that while there is a certain amount of free legal aid made available through the bar societies in various provinces, this service is not available for cases of this kind; they can be invoked only in relation to criminal offences.

Senator BOUFFARD: No, madame. When a man is sued on account of a loan he can go and seek aid.

Senator CROLL: Miss Burns is right in her statement of the position so far as Ontario is concerned.

Senator PRATT: Those instances that have come to your attention, do you not think they would involve people who had got into trouble in consequence of their own extravagance because they were easily led into purchasing things they could not afford? These instances would not represent the average citizen.

Miss BURNS: It is hard to determine who is an average citizen, but one index might be the income of people, and I would suggest that the average income would represent the average family. Some of the people who get into the greatest difficulties are those who deal with firms that are less reputable. The door-to-door salesman, the case that Senator Wall refers to, is the one where there is a very small organization of doubtful standing, and so is the finance company that finances it. To some extent, the people who get into trouble are people who, like the majority of Canadians, are susceptible to salesmanship.

Senator PRATT: Such salesmanship is prevalent throughout the world. Everywhere I went recently in Europe and even in the Far East I found evidence of pressure being brought to bear upon people to persuade them that they needed things. There were suggestions in shop windows everywhere that they could get things on whatever terms suited each individual.



Senator BOUFFARD: Do you know of any organization that publicizes opposition to borrowing money for the purpose of getting merchandise which people have not the means to pay for? Is there any publicity done in that direction?

Mrs. ROSS: I do not know, senator.

Mr. SMIT: The individual agencies try to make representations of the nature that the honourable senator indicates, but these agencies have not the funds to flood the population with literature exhorting them not to buy, and what is more, they would not be popular if they did distribute such literature.

Senator HORNER: They ought to be advised to read Proverbs.

The CHAIRMAN: We have two witnesses left, but we shall not have time to deal with them this afternoon, and we shall not be sitting tonight.

Senator CROLL: The Canadian Federation of Agriculture have to go west—the president and the secretary—next week. They are available for tomorrow morning, and there may be another witness. There will be Mr. Moore.

The CHAIRMAN: Will you be available tomorrow morning, Mr. Moore?

Mr. MOORE: Yes.

The CHAIRMAN: If you were here tomorrow morning we would hear you.

Mr. MOORE: I will be here.

The CHAIRMAN: We will sit tomorrow morning to hear Mr. Hannam and Mr. Moore.

Senator CROLL: There could be one more. I am not sure.

Senator ROEBUCK: Before you adjourn, let us express our thanks to these ladies and to Mr. Smit.

—Whereupon the meeting was adjourned.

---

OTTAWA, Thursday, July 14, 1960.

The Standing Committee on Banking and Commerce, to whom was referred Bill S-25, an Act to make Provision for the Disclosure of Information in respect of Finance Charges, met this day at 10.30 a.m.

Senator A. K. HUGESSEN (*Acting Chairman*) in the Chair.

The ACTING CHAIRMAN: Honourable senators, the committee will come to order. We have two bills before us this morning. One is the bill that got second reading yesterday afternoon, the bill to amend the Public Service Superannuation Act, C-76, and the other, the continuation of consideration of Bill S-25.

The Committee will remember that yesterday we adjourned consideration of that bill, Senator Croll's bill, and asked two witnesses to be good enough to wait over until today to give their evidence to us, and in fairness to them I think we should proceed first with the hearing of these two witnesses. I do not think that that should take very long, and after that we can adjourn consideration of Bill S-25. Is that agreeable to the Committee?

Senator CROLL: May I make one observation there, Mr. Chairman? Yesterday a letter was sent by the President of the Canadian Labour Congress to Senator Hayden. I do not know whether you have that letter.

The ACTING CHAIRMAN: No.

Senator CROLL: I should like to have it for the record. A copy was sent to me and I wonder whether I could have the indulgence of the committee to put the copy on the record. Senator Hayden has the original.



The ACTING CHAIRMAN: You would like to have the letter incorporated in the proceedings?

Senator CROLL: Yes. This is the view of the Canadian Labour Congress.

Senator ISNOR: I presume the same procedure will be followed as was adopted in the case of the Canadian Chamber of Commerce.

Senator CROLL: That was put on the record yesterday. May I have permission to incorporate in the proceedings this letter from the Canadian Labour Congress?

The ACTING CHAIRMAN: Yes. The understanding was that we would put these letters on the record and if we wanted to hear either of these bodies we could summon them to appear before us.

(Hereunder the letter from the President of the Canadian Labour Congress addressed to The Honourable Senator Walter A. Hayden, dated July 13, 1960.)

July 13, 1960.

The Honourable Senator Walter A. Hayden,  
Chairman,  
Banking and Commerce Committee,  
The Senate of Canada,  
Ottawa, Ontario.

Dear Senator Hayden:

The attention of the Canadian Labour Congress has been drawn to Bill S-25, an Act to make provision for the disclosure of information in respect of finance charges. We have been informed that this Bill has been referred to the Senate Banking and Commerce Committee, of which you are Chairman, for consideration. We have furthermore been invited to make representations to this Committee and I take this opportunity to express our appreciation for this invitation.

In the opinion of the Canadian Labour Congress, Bill S-25 should receive the approval of your Committee. It represents an important and socially desirable attempt to protect large numbers of Canadians, particularly those with low incomes, from exploitation by those who extend credit within the meaning of Section 2(a) of the proposed legislation. The fact that many people in this country must have recourse to borrowing, whether for the purchase of a home, household goods, a car, for costly medical care or to provide a child's education, is something which does not require elaborate documentation. The proliferation of finance and acceptance corporations, the personal loans departments of banks, the mortgage departments of insurance companies, the credit arrangements made available by almost every retail establishment, make this only too clear. It is not so much a question, then, of credit being available in a society where deferred payment is part and parcel of our way of life. It is rather to what extent credit is made available at a price which is excessive and which tends to impoverish because of the deceptive ease with which it is made available.

Previous investigations by parliamentary committees have verified the fact that some of the credit agencies charge very high interest rates. We refer you, for example to the Proceedings of the Banking and Commerce Committee of the House of Commons in 1956. It is quite apparent that the true interest rate, that is, what the borrower actually pays, is not evident or at any rate not obvious when the

transaction is made between the credit agency and the customer or client. It is a commonplace for some of these agencies, particularly the finance corporations, aggressively to advertise loans that are at once easily available and repayable in ostensibly small and regular instalments. As the Parliamentary Committee report indicated, while the loans may be easily available, the repayments are far more onerous than meets the unsophisticated eye. The same kind of thing is true with regard to stores which sell goods on the instalment plan and which have carrying charges. All in all, therefore, there is exploitation of the consumer and more particularly of that consumer who can least afford it.

Bill S-25 introduced by Honourable Senator Croll aims, at the least, to make easily ascertainable the real interest charge that a would-be purchaser or borrower would have to pay. If the terms of the purchase are clearly stated and if the purchaser sees plainly what the cost of instalment buying means to him, he may then be in a better position to make an intelligent choice as between vendors or lenders. He may also be in a position more rationally to decide whether it is in his best interest to purchase or borrow on the instalment plan. In short, if the purchaser then goes forward with his purchase or loan at least he does so with his eyes open. Since true interest rates would become a matter of public knowledge as a result of Bill S-25, it is possible also that competition will play its part in reducing real interest rates and thereby help the consumer in this regard.

On the basis of the foregoing observations, the Canadian Labour Congress wishes to endorse Bill S-25 and expresses the hope that passage of this Bill will be recommended by your Committee.

Yours truly,  
(signed) Claude Jodoin,  
President,  
Canadian Labour Congress.

Senator CROLL: I will not read the letter. There is, however, one thing more I would say. In view of what was put on the record yesterday I should like to put on a pamphlet issued by the Royal Bank of Canada which is available to everyone, indicating how they do business. May I have permission to put that on the record?

Senator ASELTINE: What is that about?

Senator CROLL: Yesterday there was an agreement form put on the record, if you will remember, indicating how the monthly payments were made, and all I am asking is that this pamphlet issued by the Royal Bank of Canada be also incorporated in the report. I do not think there should be any objection.

Senator McDONALD (*Kings*): Is that similar to the arrangement made by the other banks?

Senator CROLL: I do not know about the other banks, but I think this is a pleasant way of presenting it.

(Royal Bank information follows.)

## STANDING COMMITTEE

The effective  
rate of interest on  
ROYAL BANK

## PERSONAL LOANS

6% per annum  
simple interest\*

WHEN YOU BORROW	FOR	EACH MONTH YOU REPAY	THE LOAN COSTS YOU
\$120	6 months	\$20.00	\$ 2.07
	12 months	\$10.00	\$ 3.78
\$240	6 months	\$40.00	\$ 4.13
	12 months	\$20.00	\$ 7.56
	16 months	\$15.00	\$ 9.79
	24 months	\$10.00	\$14.13
\$600	12 months	\$50.00	\$18.89
	15 months	\$40.00	\$23.08
	20 months	\$30.00	\$29.93
	24 months	\$25.00	\$35.30
	36 months	\$16.67	\$50.80

Loans for smaller or large amounts, and for varying repayment periods, can, of course, be arranged.

\*Subject to a minimum charge of \$1.00, and where the loan does not exceed \$25.00 the minimum charge is 50¢.

THE ROYAL BANK OF CANADA

Over 880 branches Coast to Coast

Senator CROLL: I should also like to put on the record what is known as "Eaton's Cycle Charge Account Agreement". It is the revolving account. That is all I have.

(Agreement follows.)

### EATON'S CYCLE CHARGE ACCOUNT AGREEMENT

Account No. ....

To: The T. EATON Co., Limited.

In consideration of your opening an EATON'S Cycle Charge Account in my name I agree to pay monthly within 30 days from billing date the full amount billed to me for purchases on my account, or, if I elect not to pay in full within the 30 day period, I agree to pay the unpaid balance including your current rate of service charges thereon in consecutive monthly instalments according to the following schedule:

If the unpaid balance is:	The scheduled monthly payment will be:
Up to—\$5.00	Balance
\$5.01—\$50.00	\$5.00
\$50.01—\$100.00	\$10.00
\$100.01—\$150.00	\$15.00
\$150.01—\$200.00	\$20.00
\$200.01—\$250.00	\$25.00
Over \$250.00	Approx. 1/10 of A/C Balance

Payments on this account shall be applied first against service and other charges due and secondly against the purchase price of goods in the order of their purchase. Upon default in any payment I agree that the full unpaid balance shall forthwith become due.

All goods purchased hereunder shall remain your property until the purchase price including service and other charges have been paid in full and may be repossessed by you on default, but after delivery to me the goods shall be at my risk. It is understood that you may refuse to make further sales to me at any time.

The issue to me of my EATON'S Cycle Charge Account identification card shall constitute an agreement on your part to extend credit to me on the above terms and I agree to present my card when shopping in person and surrender it to you on demand.

Dated at .....on .....196 .  
(Place) (Date)

IF MARRIED, HUSBAND AND  
WIFE BOTH SIGN PLEASE

Signature .....

Signature .....

Address .....

City .....Prov.....



Senator ROEBUCK: May I ask a question of Senator Croll. Yesterday we had a witness who mentioned these revolving accounts and argued, not quite in these words, but substantially to this effect, that it would be impossible to calculate the rate of interest on each individual purchase in a revolving account. A person might make a purchase every day and then the account later on is rendered and paid. Would this act, Bill S-25, require an account, such as he intimated, with each purchase?

Senator CROLL: I think so. The account is rendered once a month and at that time is payable.

Senator ISNOR: I believe, Senator Roebuck, you dropped one word—"in advance". It is difficult in advance to compute the charges.

Senator LEONARD: What Senator Croll has said is rather questionable in my opinion. It says: "Unless before the transaction becomes legally binding he furnishes to that other person a clear statement in writing setting forth . . ." It seems to me to require at the time the purchase is made, before delivery of the goods, information with respect to the rate of interest, the charges made in connection with the transaction.

Senator ROEBUCK: It is in advance of rendering the bill; no one expects payment before the bill is rendered. The transaction is not completed until the bill is rendered, and that is in advance.

Senator LEONARD: At the time of the purchase or before delivery, the calculation required by this bill would have to be made.

Senator ROEBUCK: It would have to be made prior to the rendering of the bill.

Senator LEONARD: Prior to the person taking the goods away from the store.

The ACTING CHAIRMAN: Honourable senators, shall we proceed now with the two witnesses, Mr. H. H. Hannam, President of the Canadian Federation of Agriculture, and Mr. D. Kirk, the Secretary Treasurer of the organization, who accompanies Mr. Hannam.

Senator McDONALD (*Kings*): I am sure that it does not make much difference to Dr. Hannam, Mr. Chairman, but he is Dr. Hannam.

The ACTING CHAIRMAN: Dr. Hannam will now give his evidence.

Dr. H. H. HANNAM: Mr. Chairman and honourable senators, my brief will not be long.

The Canadian Federation of Agriculture appreciates very much the opportunity given to it to appear before this committee and express its views on Bill S-25, the Finance Charges (Disclosure) Act. This is not a matter on which our office has available to it special information. We should also frankly state that the particular provisions of this bill have not been before our organization as a matter of policy and we do not therefore have a specific mandate from our membership asking us to give this matter our support. However, we feel confident that our members would consider us remiss if we did not take advantage of your invitation to speak in support of this bill.

We have the semi-annual meeting of our general organization two weeks from now and if our presentation were just after that we would have the official approval of our board. However, with a country this size we cannot meet once a month with our board and sometimes we have to take action, knowing the general viewpoint of our board and of our members. We have to take that risk at times.

The intent is very much in line with the consistently held views of our members in matters of this kind, that is, that all reasonable steps should be taken by government to ensure that the consumer, in his business dealings, has readily available to him the information necessary for him to know what he is buying and what kind of obligations he is incurring.

As far as this bill is concerned, we do not think that the farmer interest is to be distinguished particularly from the general consumer interest. It might be thought, in fact, that as independent business men, farmers would be inclined, in general, to make somewhat more use of banks and credit unions, and less of the more expensive forms of credit. Also, since the farmer's income is not received in regular monthly instalments to the same degree that is true of the wage or salary earner, he is perhaps not so likely to make heavy use of instalment buying. We do not have statistics in this regard but even if allowances should be made for this kind of consideration, there is no doubt that the farmer, as well as the man in the city will have frequent recourse to high cost credit in one form or another.

We think it is our responsibility, certainly, to express our views on behalf of some 400,000 to 450,000 farm families when it is a matter of general consumer interest. The farm family is really a double consumer at retail prices because the farmer buys not only his family requirements direct, just as other families do, but he also buys his farm supplies practically all at retail prices, and this we think gives us some responsibility to speak for the general consumer.

It seems clear to us that there is something wrong as long as people of good credit standing pay interest of 15 per cent to 25 per cent on their borrowing in any form. To say this is not necessarily to claim that exorbitant profits are made by stores or lending agencies. The cost of extending such high cost credit may also be quite high. What we do feel is that improved public understanding and education on the cost of credit should result in a great many citizens of this country, the great bulk of whom are good credit risks, obtaining the money they need at reasonable rates of interest. Such money is obtainable through the banks and through the credit unions. In particular, credit unions are very well adapted to meeting consumer credit needs.

Our feeling is that the passage of this bill could make a very great contribution to more general public understanding of the cost of credit, and this in turn should lead to more and more people abandoning their reliance on credit sources that charge excessively high rates. The result could also be, of course, a healthy reduction in the amount of unwise use of credit.

It is difficult for us to see how any valid objection can be made to the provisions of this bill. I should say the principle involved in this bill.

The ACTING CHAIRMAN: That is a better term.

Dr. HANNAM: I think so, Mr. Chairman, because, as your discussions have indicated, there would be some trouble in working it out by reason of the use of the word "transaction". What we wish to know is, what the cost of credit is under a certain credit program, and if that could be established without having it apply to each transaction, then the bill would accomplish what it was intended to. This is not a field in which even the interested and aware consumer finds it easy to determine exactly what it is he is paying for credit. The mathematics of such calculations are quite complex and not readily carried out by the bulk of consumers. Most people, however, do have some idea of what a reasonable interest rate is. The simple requirement that any person extending credit as part of his business will be required to inform his customer what he is charging in the way of finance charges of all kinds, both in terms of total cost, and in terms of the simple annual interest rate, strikes us as being altogether reasonable and desirable.

May we say that this is a field in which we think special legislative measures to protect and inform the consumer are very well justified. The only argument that could be brought against this bill is that it is not the responsibility of the State to protect people in this way—they must look out for themselves, and if they get stung it is their own fault. We do not think this

argument can have any validity in this particular case, in which all that is being required is clear and straightforward information, and in a field where with the best will in the world such information is, for the consumer, hard to come by.

We do have a modest suggestion to make about this bill, for your consideration. The bill provides that a "clear statement" must be furnished by the person extending credit to the other party to the transaction, setting forth the total amount of finance charges and the percentage relationship expressed in terms of simple annual interest. It has occurred to us that this might be carried a bit further. Would it not be possible to provide in the bill that an appropriate department of Government shall prepare an official form on which the required information shall be set out simply and clearly and that this form shall be used and attached as one of the documents in every transaction involving credit—and further, that the person obtaining the credit shall sign this form? In this way, such a form could become a well known feature of all transactions involving credit, attention would be focussed on this matter of finance charges in a particularly effective way, and the problem of determining what is a clear statement and ensuring its use would be very greatly simplified.

It might be possible in this case to have a form that would be much more simple to handle and fill out and provide the answers to than just to say that every transaction must have this. This form might be a means of getting around one of the undoubted problems that would exist in carrying out a bill of this kind.

And now, Mr. Chairman, I would like to make a couple of comments further, and in any discussion that may take place on the bill I would be glad to have our Secretary Treasurer, Mr. David Kirk, participate. He is with me here.

One thing that has not been said by any of us in our presentation in support of this bill is this—and I think it is extremely important. The effect of this bill would be to have a larger measure of price competition apply in the case of credit charges for the benefit of all Canadian citizens.

Senator ISNOR: What do you mean by price competition?

Mr. HANNAM: What I mean is this: If the consumer is given information on the basis of simple interest charged, expressed in percentage, he can then compare that contract with the contract of another finance company and still another. I am not thinking so much of instalment buying in this case.

Senator ISNOR: Interest only?

Senator LEONARD: If you are not thinking of instalment buying, what are you thinking of?

Dr. HANNAM: I am thinking of finance companies.

Senator LEONARD: Straight borrowing transactions?

Dr. HANNAM: I am thinking of the finance company that is in the lending business.

Senator LEONARD: What you mean by price competition is competition with respect to the rate of interest and the rate of charges, not the price of goods.

Dr. HANNAM: No, total charges. How do they know now? It has been said before this committee that almost every transaction is one by itself and therefore is complicated and different, and so forth. Perhaps it is too complicated, but in any case, if the companies that do the financing and put in a lot of charges as well as interest charges, had to express it in a figure that all consumers could compare with others, then they would have a chance of going to the one that did not overcharge them and that could force down financing charges because of price competition.



In our society we are getting away from price competition. There are fewer and larger corporations doing business, selling to Canadian consumers, and they have a tendency to get away from price competition, to administer prices, and then compete on the basis of promotion and service.

If we believe in competition, as we are all supposed to believe in it, why don't we say that we are going to see to it that the maximum of price competition shall continue? Why do we not in Canada, as a general principle, make every effort to shape our laws in such a way as to require and maintain the maximum of price competition?

Senator ROEBUCK: We have got away from haggling on the market.

Dr. HANNAM: Well, many people who talk the most about competition are the very ones who are trying to get away from it in their own business.

Senator LAMBERT: May I ask Dr. Hannam if the general principle of competition affects his own clientele, the farmers, in relation to the things they sell?

Dr. HANNAM: I rather anticipated that question.

Senator LAMBERT: From me?

Dr. HANNAM: Not from you, Senator Lambert, but I did anticipate the implied criticism. It is true that farmers have used marketing legislation and asked for price supports that do eliminate some price competition, but I think there are two considerations there that are important. One is this: We have a million individual farmers in Canada competing with one another, and not only competing with one another but also competing with millions of farmers in other countries. In other words, the farmer is up against by far the largest measure of price competition of all those engaged in business.

Senator McDONALD (*Kings*): And very often with perishable products.

Dr. HANNAM: Yes, perishable products. On the other hand, there is a trend towards larger and fewer corporations that are buying from and selling to farmers, and every time they enlarge their buying capacity, their purchasing power, they have the advantage over the farmer.

There is another factor that should be considered in this connection and it is this: the farmer has been able to increase his technical efficiency and that has enabled agriculture to produce beyond the effective demand of the market, so that the oversupply we create for the market, has the effect of pressing down all the prices of our products and holding them down; and this other trend that I have mentioned, the trend to fewer and larger corporations buying and selling among the farming communities, has its influence on the farmer. The trend to fewer and larger corporations in our society gives them more power to influence their prices and maintain their prices and maintain rigidity of prices.

The ACTING CHAIRMAN: I do not wish to curtail this discussion, but I am afraid that we are getting side-tracked from this bill.

Senator ROEBUCK: In your memorandum, witness, you say that credit unions are adapted to meeting consumer credit needs. Do you know about the rate of interest the credit union charges to its farmer customer?

Dr. HANNAM: No, senator, I do not think I can give that information. It is true that credit unions usually have a special rate of interest they charge the farmer on a term loan. To the average member of the consuming public, who is mostly a salary or wage earner, they do charge, I believe, one per cent a month, but this is for a short-term loan, a loan that can be paid off by the month. This does not apply so much to farmers.

Senator ISNOR: If all the members of your association took advantage of your credit system this bill would not be necessary?

Dr. HANNAM: Are you referring to the credit union?



Senator ISNOR: Yes.

Dr. HANNAM: That is so. Some communities could do that; they could get away from instalment buying and from the services of the finance company if they used the credit union entirely. I suppose there are in fact plenty of communities in Canada where that is done.

Senator CROLL: Senator Vaillancourt, on June 9, 1960, speaking in the Senate referred to a credit union whose rate was 6 per cent. That will be found on page 2 of the Senate *Hansard* of that day. He particularly mentioned *caisse populaire* because he knows that better than any other.

Dr. HANNAM: We are not asking for any special exemption so far as credit unions are concerned. We think the credit unions are giving bona fide service and one that is agreed upon by their members and they would be happy to comply with the provisions of this bill if they were applied generally.

I have one more comment. I think this does apply to this bill. This bill is in line with the laws and regulations that obtain in many aspects of the merchandising system. You go into grocerias and you will find on the label of a can of foodstuff a description of the contents and sometimes a simple percentage of what is in these foods. You will say, that is a matter of foods and that is different; but we have the same thing for feeds for livestock.

Senator BRUNT: You are compelled to have it by the regulations of the department.

Dr. HANNAM: Yes, but why should we be compelled to have the ingredients indicated on the containers of livestock feed and not have a simple statement as to what the total charges on credit amount to.

Senator BRUNT: No one objects to total charges, but how do you compute the true rate of interest.

Senator LEONARD: Have you got the form used by the United Farmers' Credit organization?

Dr. HANNAM: No, I have not; but I am not suggesting that there should be any exemption in respect of co-operatives or credit unions, and I am sure they would be glad to comply with this.

Senator LEONARD: It is practical application that we are talking about.

Dr. HANNAM: I would frankly admit that the practical application of this will be a serious problem, but we have worked out problems as serious as this in other aspects of business.

Senator McDONALD (*Kings*): Where we want to do so.

Dr. HANNAM: Yes, and it could be simplified to bring about the effect we want without declaring that it shall apply to every transaction. A woman buys an electric iron, let us say. I do not know whether it is necessary to have the rate of interest expressed on such a transaction, but if it is not, I think we could still get the benefit of the provisions of this bill without requiring that they shall apply to every transaction. If we could accomplish that, it would be entirely desirable.

Surely we can be just as straightforward and honest about the cost of credit and financing for the Canadian people generally as we are about the contents of feeding stock for cattle, hogs and chickens.

Senator LEONARD: Did you see the form that was filed yesterday?

Dr. HANNAM: No.

Senator LEONARD: Would you like to look at it and make any comment you wish afterwards. You might tell us whether you think that is sufficient.

The ACTING CHAIRMAN: We will now hear from Mr. Kirk.

Mr. KIRK: I would like to discuss briefly the question of credit union rates. One example was given by Senator Croll, who mentioned the rate in Quebec.

The last time I borrowed from a credit union, which was in Regina, the rate was 6 per cent, and there was a patronage refund which I received, which was equivalent to one per cent of that rate at the end of the year, which made it 5 per cent, and this was also on a life-insured contract. The cost of that life insurance to the credit union was equal to one-half of one per cent of the interest charges in a general way. They vary up to 12 per cent, that is, one per cent per month.

Senator ISNOR: You got one per cent, whether you borrowed or not?

Mr. KIRK: It was a patronage dividend on borrowings and this was made after some return to—

Senator ISNOR: Is that different from a patronage dividend?

Senator BRUNT: You say you were charged 6 per cent?

Mr. KIRK: One-half per cent per month.

Senator BRUNT: And was it figured on the maximum amount owing, or on the amount owing each day?

Mr. KIRK: At the end of each month.

Senator BRUNT: That would be on the minimum amount owing each month, because you make the payment each month.

Senator LEONARD: It was not an exact calculation of the effective rate of interest; it was the application of a 6 per cent rate as against some amount that might have been owing at some particular time.

Mr. KIRK: I am not a mathematician, but it seems to me that a very close and honest approximation could be made to these rates.

Senator ISNOR: Did you sign at that time an official form such as is suggested in this brief?

Mr. KIRK: Are you referring to the experience I was mentioning?

Senator ISNOR: Yes.

Mr. KIRK: The contract did not specify the kind of information mentioned in this bill. It specified the rate on the monthly balance that I would be charged and specified the term of payments and the amortisation.

Dr. HANNAM: May I ask what the question was that Senator Leonard was asking?

Senator LEONARD: I was asking whether that form that was filed yesterday was in your opinion a sufficient disclosure of what the service charges and interest were on a credit account.

Dr. HANNAM: This gives all the information required, except the estimate of charge on a simple interest basis. The calculation as to what the simple interest would probably be on a monthly basis might answer the purposes of this bill.

Senator LEONARD: Do you not think any person readily understands that himself?

Dr. HANNAM: No; I do not think so. It says here how much is to be paid on a certain loan, but I do not think the average person using instalment buying or using any kind of loans for the purpose would have much idea as to how to calculate the rate of interest.

The ACTING CHAIRMAN: In other words, they would know how much they were going to pay, but not what the rate of interest was.

Dr. HANNAM: That is right.

Senator LEONARD: Would you know how to calculate the rate of interest in that case?

Dr. HANNAM: I would sooner have some one do it who was more of an expert than I am.

Senator BRUNT: What about the shopkeeper?

Dr. HANNAM: Do you suppose that this calculation would be any more serious than a lot of calculations we make on income tax forms nowadays?

Senator BRUNT: Yes, much more.

Senator LEONARD: It is impossible to make that calculation.

Dr. HANNAM: I don't think so. It would be possible, I think, to make out forms like this. Forms like this could be made out which the dealer or the retailer could use and say, "There is the calculation."

Senator LEONARD: But you say that that is not sufficient.

Dr. HANNAM: Yes. I say that if it requires so much for payment it would be possible to have charts which would explain to people, "If this is the payment on this amount, then that is the rate." They would not have to do any calculation, but simply consult the chart.

Senator LEONARD: The chart would vary for every transaction every day a transaction took place.

Senator ISNOR: Every day of every month there would be a change.

Dr. HANNAM: I do not think it would be every day of every month.

Senator ISNOR: That is what it would amount to.

Senator WHITE: Take a bank. Let us suppose a merchant is operating on an overdraft. How would the bank produce a statement, the rate of interest being, say, 7 per cent? That happens in thousands of cases.

Dr. HANNAM: I suppose that question would come under the answer I gave a few minutes ago when I said that in my opinion the benefits of a bill such as this could be obtained without having it applied to every individual transaction.

Senator LEONARD: What you are interested in is the disclosure of the truth.

Dr. HANNAM: Yes, in respect to their credit program; and if sufficient information could be given to explain what the simple rate of interest was according to their lending contracts, then I would not think it would have to be necessarily on each individual transaction. However, I realize that you are discussing the bill as it stands, though bills are sometimes amended.

Senator WHITE: You have to translate it into everyday business practice.

Dr. HANNAM: If this is worth doing in Canada, we can do it. And if we find difficulties in administering it in the form in which it is now, I think we could change it to get the desired information out into the hands of all the people, and that would be highly beneficial.

The ACTING CHAIRMAN: Thank you, Dr. Hannam. Are there any further questions? The other witness we agreed to hear this morning is the representative of the Federation of Automobile Dealers' Associations of Canada, the Executive Vice-President, Mr. H. B. Moore.

Senator ROEBUCK: I wish to express the thanks of the committee to Dr. Hannam and his associate for the evidence they gave.

The ACTING CHAIRMAN: The committee is very much indebted to all these people who have taken so much trouble to make representations to us.

Honourable senators, we will hear Mr. Moore the Executive Vice-President of the Federation.

Mr. MOORE: Mr. Chairman and honourable senators, I am called Executive Vice-President, but I think "hired man" would be better. I have been in various branches of this work for 47 years. I have been a dealer and have been in contact throughout that time with the matters we have been discussing.



Mr. Chairman, the comments contained in this submission are presented in three parts, as follows:

Part I contains a description of the Federation of Automobile Dealer Associations and the role of the automobile dealer in the Canadian economy; Part II comments on the complexity and impracticability of the proposed legislation; Part III comments on the lack of need for the proposed legislation.

I will deal with Part I now: The federation of automobile dealer associations of Canada is a national organization, a federation of all of the automobile dealers in Canada. Membership in these federated local and provincial associations is approximately 2,600 dealerships, about one-half of the total dealers. Nobody can tell us how many dealers there are in Canada. We tried to get the information but we could not and we therefore estimated there are some 5,500 dealers altogether. We have no rival organization so that while officially we can say we represent 2,600, unofficially we speak for the dealer body as a whole. These dealers are selling perhaps 80 per cent of all the cars and trucks sold in Canada. Automobile dealers sell all the motor vehicles sold in Canada, and thus we are the medium between the manufacturer and the public. They employ approximately 60,000 people. That applies, Mr. Chairman, to all the dealers. That is an estimate of the total number of employees of all the dealers and not just the employees of the 2,600 in our federation. They pay taxes in every hamlet, village, town and city. They are in direct contact with the public. Selling is done everywhere: On the farm, in the village store, in the shack at construction projects and I may say in the farmer's kitchen, and everywhere.

Senator HORNER: On the roadside and everywhere you can get them.

Mr. MOORE: Yes, that is so. It is done in many places where facilities for close figuring of mathematical problems is utterly impossible.

Senator JOHN A. McDONALD: There are a lot of people who go to the manufacturer's plant to pick up their cars. Are these cars sold through dealers?

Mr. MOORE: Yes.

Mr. Chairman, I will now deal with Part 2, containing comments on the complexity and impracticability of the proposed legislation: For several reasons the calculation of a per annum rate of interest involved in a finance charge would present a complex and difficult problem to the average retail salesman or dealer, and there is strong doubt that he would be able to comply with the requirements of the bill. May I hesitate here for a moment, Mr. Chairman, to remove one question from your minds if it is there. We are fully in favour of complete revelation of the facts. Our only objection here is to this requirement of showing a percentage per annum. We are revealing the facts today and we are in favour of doing that. In other words, any form of truth that is necessary in selling and financing. These things are important, honourable senators.

There are five recognized formulae for the calculation of simple annual interest which vary in the net result.

Senator ROEBUCK: And I suppose under the bill you could take any one of them to suit yourself.

Senator BRUNT: Who is going to make that election?

Senator ROEBUCK: There are five recognized formulae so you can take any one of them you wish.

Senator BRUNT: I do not agree with that.

Mr. MOORE: In its June 21 issue the Toronto Globe and Mail carried an article which clearly demonstrated the impracticability of Bill S-25.



To test the "simplicity" of simple annual interest, the author invited a number of persons and organizations to calculate the rate for a principal amount of \$500.00 repayable over a period of 12 months in equal monthly payments with service charges of \$30.00. The details of the transaction were deliberately selected as representative, and those approached included an actuary, a professor of mathematics, a department store, two finance companies and two retail merchants. The article reported that a total of twelve different answers were submitted, ranging all the way from 6% to "about" 12%. In our opinion, it would be most unlikely that local merchants could obtain uniform results in such a calculation when experts disagree.

It has been suggested that the problem could be solved by requiring sales finance companies to provide dealers with tables giving the annual rate in simple interest, based on a prescribed formula. In the first place it should be noted that a number of automobile dealers, and, no doubt, other retail merchants who extend credit, do not use the facilities of sales finance companies. They finance their own sales. Secondly, the instalment sale is a matter of contractual agreement between the customer and the dealer, and consequently the sales finance company assumes no responsibility for the service charges agreed to, whether they be expressed in dollars or percentages.

Assuming, however, that such charts could be prepared it might not be impossible to use them if all transactions were for round dollar amounts, repayable in equal monthly instalments, over a period of consecutive months; but comparatively few cars and trucks are sold on such rigid schedule. The individual customer usually wishes the payments to begin on the day following his pay-day, which may be any number of days up to a month from the date of sale. Generally, the finance charge is not increased where fifteen days or less are involved, but in such an adjustment the charts would be of little help in finding the accurate per cent per annum. This is equally true of instalment sales to school teachers and such primary producers as farmers, fishermen and lumbermen, whose income is seasonal. For these people special plans are provided for cars, trucks, tractors, etc., where payments are arranged in relation to the seasonal nature of their income. Charges in irregular transactions such as these are bargained to a dollar amount by the buyer and seller, but to convert a dollar amount in an irregular payment transaction to a true and accurate per annum rate would require the services of an expert mathematician.

Charts presently in use show an indicated dollar finance charge for unpaid balances within specified brackets of even amounts, usually at \$20.00 intervals. To enlarge these to cover all amounts and terms would be impractical. Such charts would be bulky and costly, and inconvenient for dealers and their salesmen to use. Furthermore, they would only be available to those dealers who do business with sales finance companies. There is also the general practice in the industry of eliminating the cents from the monthly payment, with an adjusting pick-up in the first or last instalment. This feature, which provides a minor convenience to customers and merchants would also complicate calculations. The necessity of making these complicated calculations would raise the operating costs of the merchant concerned, and delay sales until the rates had been verified because of the serious penalties involved.

Mr. Chairman, may I make one more comment here. I heard Mr. Nelson used some phrases yesterday that you will find mentioned in this brief. Let me say at this moment there have been no conferences, no collusion, no co-operation between us. We apparently know the same story from our experiences and have related it in somewhat the same language but we have not been together in any sense. We sat together yesterday but that is all.

The ACTING CHAIRMAN: So you have not made us liable to prosecution under the Combines Investigation Act.

Mr. MOORE: I would not like to answer that, Mr. Chairman, it is too complicated.

I will now take up Part III of our submission, Mr. Chairman, dealing with the comments on the lack of need for the proposed legislation.

In our opinion this legislation is both unnecessary and undesirable since the automobile buyer presently obtains full disclosure of the finance charges he assumes in terms that he can understand and appreciate, namely, in dollars and cents.

People are paid in dollars and cents and not in percentages. The significant item from their viewpoint is the amount of the monthly payment. The conditional sale contracts used in the retail auto trade prominently display the amount of the cash selling price, down payment, unpaid balance, the amount of the charge, and the amount of the monthly instalment all in dollars. We contend that this is very much more informative and meaningful than a statement of the charges in terms of simple annual interest.

2. If it were decided that charges must be stated, both in dollars and as a per cent per annum, it is very likely that anything over 6% per annum would be buried in the sale price. In other words, the charge would go underground, which would be undesirable because the consumer would not then know how much he was paying for the merchandise and how much for financing. In driving the cost of credit underground the proposed legislation would be a disservice to the public.

That is a common practice today in some lines and among some people. I know you do not want names mentioned but I could mention at least one who is doing that today.

Senator HORNER: Reference was made yesterday to the word "underground". I don't know what is meant by that.

Mr. MOORE: The merchant would simply make a time price.

Senator ISNOR: He would use the seller instead of the merchandise.

Mr. MOORE: I do not despise the word merchandise. I do not think there is any opprobrium attached to that word. Let us say the merchandise is worth \$1,000. It would normally be sold so that, say, \$200 is paid down and the balance is spread over 12 months. Instead of making a charge of whatever it may be, \$25, \$35 or \$50, the merchant would charge \$1,050 for his merchandise and say, "There is no charge for time sales." That is what I mean by going underground and that is being done today and it is being advertised in the newspapers every day.

3. The confusion which a quoted interest rate can create is evident in the case of a recent example presented in the House of Commons by the Member for Assiniboia, Mr. Hazen Argue. Mr. Argue commented that a well-known department store was charging 54% per annum on instalment contracts. This was the rate, which he said was computed, for a service charge of \$2.25 on a balance of \$20.00 paid in five equal monthly instalments. The point here is that most purchasers would not object to a charge of \$2.25 for the privilege of paying for an article on time over a five-month period. While ignorant of the actual processes involved, their common sense would tell them that a reasonable charge for service would be justified. In return for the \$2.25 charge, the store had to provide the funds, check credit, set up the account, assume a risk, collect and process the instalments and close the account. However, had the customer been quoted a charge of 54% per annum, he would have concluded that there was something seriously wrong because of the prevalent belief that anything over 6% is usurious. Actually, the trouble mainly lies in failure to distinguish, for the sake of convenience, between the cost of money and the other services involved in a credit sale. In this case



the actual money cost was probably in the range of 25 cents, with the balance of \$2.00 applying to, but hardly paying for, the other services. The smaller the amount of credit involved, the more indefensible the service charge appears, when quoted as an annual rate of interest. The bulk of credit sales by smaller merchants fall into this category, and if this Bill should become law, credit costs would be driven underground and confusion would exist where none need exist today.

4. Money is involved in every deal made throughout the business world, but practice and custom is to state the cost as a percentage only where a loan is involved. People are accustomed to having the cost of borrowed money expressed as a percentage while the cost of a service is usually quoted in dollars and cents. It may be argued that both are money, but that is the custom of the trade just as it is customary to buy grapes by the pound and oranges by the dozen, even though both are fruit.

5. The present practice of expressing the finance charge in terms of cash is universal in North America. In thirty states of the United States of America, there are laws governing instalment sales, and in each case the law requires, among other things, the disclosure of the dollar amount of the finance charge. This is soundly based on thirty years of experience with a substantial volume of sales financing, and it has proved to be the only workable method.

6. Conditional Sales Contracts executed by the buyer and seller are subject to Provincial Legislation throughout Canada. In our opinion these laws adequately protect the rights of the consumer and we question the necessity of Federal Legislation in this field.

7. We are grateful to the members of the Senate, Banking and Commerce Committees for the privilege of presenting our views on Bill S-25. We wish to make it abundantly clear that we are in favour of full disclosure of finance charges to the consumer, but in terms of dollars rather than simple interest percentages. This is our practice today.

May I make just one comment in closing, Mr. Chairman? I know it is unnecessary but I say to you that no matter how high your motives may be you cannot legislate sanity in purchasing. We know that people buy all sorts of things that sound judgment would dictate they should not buy. I defy anybody, no matter how capable, to legislate that sort of sanity; in other words, temperance in buying or temperance in liquor or anything else.

Senator TURGEON: Your concluding sentence reads, "We wish to make it abundantly clear that we are in favour of full disclosure of finance charges to the consumer, but in terms of dollars rather than simple interest percentages. This is our practice today." To what part of the statement do the words, "This is our practice today" apply?

Mr. MOORE: To "...disclosure of finance charges... in dollars".

Senator CROLL: Mr. Moore, I have before me a conditional sales contract. I do not want to disclose the name of the company or the contract but I will show it to the chairman. I received it from the Social Service Bureau of Sarnia a few days ago. They vouch for it and I will take their word for it. The contract is for the sale of an Oldsmobile car. The description does not make any difference but at the top it shows the cash selling price as \$1,995, and the trade-in allowance as \$445, leaving an unpaid balance of \$1,550. The miscellaneous charges are nil. The registration charges are \$5, and the finance charge on \$1,550 is \$979, making a total of \$2,534. The purchaser is to make 35 payments at \$71 each and one payment at \$49. That is to pick up the end. The contract is dated January 4, 1960.



Senator BRUNT: What is the single payment?

Senator CROLL: One payment at \$49 to pick up the last payment. Now, I ask you this question: Do you suggest—

Senator ISNOR: Just let me interrupt to ask a question in order to have a clear picture of this. There are 35 payments?

Senator CROLL: Thirty-six; 35 at \$71 and one at \$49.

Senator ISNOR: Three years?

Senator CROLL: Yes. Now that, in your opinion, as I get it from your brief, is what you consider full disclosure?

Mr. MOORE: Yes, sir, discloses what he is charged.

Senator CROLL: Are you prepared to just give me a guess as to what the monthly interest rate on that is?

Mr. MOORE: No, sir, I can't; I couldn't do it. That is just what I am through saying. I would be contradicting myself if I said I could; and I am not trying to be tricky.

Senator CROLL: For your own information, and you can work it out yourself—and I took the trouble to work it out—his monthly interest rate is 35½ per cent.

Mr. MOORE: Mr. Senator, I would suspect that there is insurance included in that figure.

Senator CROLL: Where is it? It says finance charges \$979.

Mr. MOORE: I must guess, but I would suspect that there is a substantial charge for insurance in that amount.

Senator CROLL: In that contract is there anything else besides insurance?

Mr. MOORE: I don't know.

Senator CROLL: But this is a normal sort of a contract?

Mr. MOORE: I won't say normal. It is one of the contracts used, yes. When we were in business we had a contract form of our own, for certain reasons owing to experiences we had from time to time, and it was similar in most respects to other contracts; but there is no normal contract.

Senator CROLL: \$979 as a finance charge for a sum of \$1550 runs into almost more than 60 per cent of the original price. Is that what you consider full disclosure?

Mr. MOORE: Yes, sir. It should warn, I would suggest, any sensible person off a contract like that, if they are charged that on \$1500.

Senator HORNER: But a moment ago you spoke of some people willing to buy almost anything. Shouldn't we be endeavouring to protect them?

Mr. MOORE: Mr. Senator, I suggest to you, yes, that is a worthy motive, but I suggest to you with all respect, and with a good many years experience, that you can legislate from now to doomsday and you cannot stop that, whether it is automobiles, or anything else.

Senator HORNER: My namesake, Bishop Horner, when he had his church up, you couldn't be a member of that church in good standing if you owed any man anything. It worked very well for many people.

Senator BRUNT: Are there many members today?

Senator CROLL: One more question: I have a letter here a letter from Vancouver in which they say that in most of these transactions, or a great many of these transactions, the contracts are signed in blank. Is that so?

Mr. MOORE: In a good many cases, yes.

Senator CROLL: You agreed with that observation that that is one of the—

Mr. MOORE: Evils.

Senator CROLL: That is one of the evils?

Mr. MOORE: Yes, sir, very definitely. In other words, we are not saints, but we subscribe to good business practice.

Senator CROLL: You are not being tried for not being saints.

The ACTING CHAIRMAN: I suggest that the real question that we have to consider is whether if to that contract Senator Croll has pointed out to us there were added the words, "This represents an annual interest rate of 35 per cent", it would discourage the man from signing it or not.

Senator CROLL: Exactly; I agree with that.

Senator McDONALD (*Kings*): That is the sort of thing we must try to protect the man against.

Senator CROLL: The point is that this came to my hands, and I was a bit shocked when I saw the finance charges, and I did some calculation. It took me a little while.

Senator BRUNT: Did your calculation comply with the act?

Senator ASELTINE: How many years did that contract run?

Senator CROLL: Three years.

Senator ASELTINE: And I suppose the insurance would be \$110 a year? That is what I have to pay.

Senator CROLL: Well, you are a bad driver.

Senator ASELTINE: I haven't had an accident in 50 years.

Senator CROLL: The point I made is that I don't know what it includes, and that is exactly what I am trying to bring to the attention of the committee. I do not know what that \$979 includes. It shocks me to see that \$979 for a \$1550 contract, which is almost more than 60 per cent of the purchase price. If that is normal, if that goes on to any extent at all, we ought to do something.

Senator McDONALD (*Kings*): Yes.

The ACTING CHAIRMAN: Senator Brunt has a question.

Senator BRUNT: If this act were passed, is this not an example of where you drive the extension of credit underground? The big thing in this transaction is that the man had 36 months to pay. That is how the car was sold. There are people buying cars every day in the large cities that are not interested in the selling price of the car, they are not interested in what they are allowed on their own car, they are not interested in the service charge, they are interested in one thing only—what is the monthly payment?

Mr. MOORE: How much a month.

Senator BRUNT: That is all they are interested in.

Senator CROLL: Should we not be interested, then, if they are uninterested? Is that not our duty as representatives of the people?

Senator McDONALD (*Kings*): To protect them against themselves.

Senator BRUNT: They may not be so foolish, because many large companies today have adopted a policy of not owning motor cars, they rent them. After all, this purchaser was renting a car for \$71 a month, and his insurance was paid for.

Senator CROLL: Don't assume, don't assume. I did not argue with the witness. Don't assume the insurance is paid for. I don't know what is included. What I am saying is, and all I am suggesting is, that the finance charge should be specified. If there is insurance, good and well. What I don't know is what is included in the finance charges.

Senator LEONARD: But you would still want the 35 per cent to show?

Senator CROLL: Yes.

Senator LEONARD: Even though that figure of finance charges did include insurance?

Senator CROLL: Yes.

Senator ROEBUCK: Oh, not if the finance charge included insurance.

Senator LEONARD: Yes.

Senator ROEBUCK: No, no.

Senator LEONARD: That is what the bill says.

Senator BRUNT: That is what the bill says.

Senator HORNER: May I ask a question? I will make this remark first, that as far as driving the extension of credit underground, that would still mean competition, and this money would have to come from some place. Further, would you agree that if the bill was framed in such a manner that you would not be tied down to the last percentage, with a variation of one per cent, it would work?

Mr. MOORE: I do not think that would do it. I will give an example, and you will try to imagine the difficulty of calculation. Supposing a farmer came to me and said, "Mr. Moore, I will pay you so much down—never mind the amounts, and I can't pay anything for three months until my crop starts to come in; but after three months I can make heavy payments for four months, then I am going to have another blank period, and you will have to cut down to \$50 a month, and I will pay you the balance in six months." If you can imagine an actuary calculating the percentage, and the time it would take, even within one per cent, well, it is just about impossible.

Senator HORNER: I still think you could know approximately what the interest rate is.

Senator WALL: I want to raise this question, Mr. Moore. I did not hear the evidence and I have not heard the submission, but it was brought to my attention by several persons that when people buy a car on time—I do not want to accuse anybody of trying to sell cars on time rather than accepting cash, but it is very simple for people to obtain credit, and they are encouraged to buy cars on credit. I can go that far. I have had a couple of cases brought to my attention where young people who were buying a car thought they would buy it on credit because they were expecting money to come in during the next five or six months, and they were actually told: "Well, you do not have to tie yourselves down to this. Take out a regular contract for two years and when you pay the money you will get the credit for the interest that is outstanding". Now, that is not true, because there is a ground rule that these companies have to the effect that after so many months they will return to you 70 per cent of the interest, and then 60 per cent of the interest, and then 50 per cent of the interest. That to me is a strange kind of situation because, in effect, it penalizes the man who is willing to go back and pay off this loan and say: "Give me credit for the outstanding interest on the outstanding balance". He does not get that credit because there are ground rules in operation. Is that true, generally?

Mr. MOORE: I think there are some people in the business who are scallywags, and you will find them in any business. If I had a blackboard here, and the senators would permit me to go ahead, I could illustrate this, but I cannot in words. I have been in the finance business and I have figured rebates. We gave people what they were entitled to, but usually that amount is not nearly what they think they are entitled to.

The ACTING CHAIRMAN: I think, Senator White, you had a question?



Senator WHITE: Yes, a very simple question. I would like to ask the witness with respect to the contract Senator Croll showed him where the service charge lumped together is over \$900. You stated you have been in the business?

Mr. MOORE: Yes, sir.

Senator WHITE: Would you care to give us, if you had been handling this sale, an approximate idea of what the service charge would be, and state whether that would include insurance, and about what the insurance would be per annum? Would you care to do that?

Mr. MOORE: I would care to, but I cannot. I would be glad to get that information and furnish it to the committee because, candidly, I am greatly surprised at that figure. I do not mind telling you that.

Senator WHITE: Would you like to make a rough guess, or give us an estimate?

Mr. MOORE: There is insurance for three years in there, and I would say it would run to at least \$350. You gentlemen know the cost of insurance, and I do not think a dealer would be fool enough to put a car in the hands of a purchaser like that without having insurance.

Senator WHITE: Why would they call it a finance charge?

Mr. MOORE: I do not know, sir. I am not in favour of that. I am in favour of disclosing the facts, whatever they may be.

Senator WHITE: If the insurance was \$300 or \$350 would you care to say whether the balance would be a fair amount?

Mr. MOORE: I would not say it is fair, but it is probably the amount.

The ACTING CHAIRMAN: I must express on behalf of the committee our gratitude to you, Mr. Moore, for the clear presentation you have made on behalf of your association.

Senator CROLL: Mr. Chairman, I have one thing to bring up. If you will recall, during the course of the discussion in the house the question of the constitutionality of the bill was raised by a few senators, and I also discussed it. I am now moving that our Parliamentary counsel be requested to give us a legal opinion on the constitutionality of the bill.

The ACTING CHAIRMAN: You have heard the motion, gentlemen. Is there any discussion on it? It sounds reasonable enough.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: We will adjourn further consideration of this bill to another day.

Hon. SENATORS: Agreed.

Whereupon the committee adjourned.













Third Session—Twenty-fourth Parliament  
1960

THE SENATE OF CANADA  
PROCEEDINGS  
OF THE  
STANDING COMMITTEE  
ON  
BANKING AND COMMERCE

To whom was referred the Bill C-58, intituled:

An Act to amend the Combines Investigation Act and the  
Criminal Code.

---

The Honourable SALTER A. HAYDEN, *Chairman*

---

WEDNESDAY, AUGUST 3, 1960

THURSDAY, AUGUST 4, 1960

WITNESSES:

The Hon. E. D. Fulton, P.C., Minister of Justice; Mr. T. D. MacDonald,  
Director, Combines Investigation Branch, Justice Department, and Miss  
Isabel Atkinson, National President, Canadian Association of Consumers.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1960



THE STANDING COMMITTEE ON  
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor ( <i>Norfolk</i> )
Connolly ( <i>Ottawa West</i> )	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

---

\**Ex officio member.*

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Tuesday, August 2nd, 1960:

"The Senate resumed the debate on the motion of the Honourable Senator Choquette, seconded by the Honourable Senator Higgins, for second reading of the Bill C-58, intituled: "An Act to amend the Combines Investigation Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Aseltine moved, for the Honourable Senator Choquette, seconded by the Honourable Senator Brunt, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative".

J. F. MACNEILL  
*Clerk of the Senate.*

THURSDAY, August 4th, 1960.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-58, intituled: "An Act to amend the Combines Investigation Act and the Criminal Code", have in obedience to the order of reference of August 2nd, 1960, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,  
*Chairman.*



## MINUTES OF PROCEEDINGS

WEDNESDAY, August 3, 1960.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

*Present:*— The Honourable Senators Hayden, *Chairman*; Aseltine, Bois, Brunt, Burchill, Crerar, Croll, Dessureault, Golding, Gouin, Hugessen, Kinley, Lambert, Leonard, Macdonald, McDonald, McLean, Pouliot, Power, Robertson, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt, Wall, White and Woodrow.

*In attendance:* The official reporters of the Senate and Mrs. I. Winkler, Executive Director, Canadian Association of Consumers.

On motion it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on Bill C-58, An Act to amend the Combines Investigation Act and the Criminal Code.

The Committee proceeded to the consideration of the said Bill.

Miss Isabel Atkinson, National President, Canadian Association of Consumers, was heard and questioned.

Mr. T. D. MacDonald, Director, Combines Investigation Branch, Department of Justice, was heard in explanation of the Bill.

Clause 1 was carried.

At 1.00 p.m. further consideration of the Bill was adjourned.

At 3.45 p.m. consideration of the Bill was resumed.

*Present:* The Honourable Senators:— Hayden, *Chairman*; Aseltine, Bois, Brunt, Burchill, Connolly, (*Ottawa West*), Crerar, Croll, Dessureault, Golding, Gouin, Hugessen, Kinley, Leonard, Macdonald, McLean, Monette, Paterson, Power, Robertson, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt, Wall, White and Woodrow.

Mr. T. D. MacDonald was heard in further explanation of the Bill.

Clauses 2 to 8, both inclusive, were carried.

Clause 9 stands.

Clauses 10 and 11 were carried.

Clause 12 stands.

Clause 13 was passed in part.

At 6.00 p.m. further consideration of the Bill was adjourned.

At 8.00 p.m. the Committee resumed.

*Present:* The Honourable Senators:—Hayden, *Chairman*; Aseltine, Bois, Brunt, Burchill, Connolly (*Ottawa West*), Crerar, Croll, Dessureault, Golding, Gouin, Hugessen, Kinley, Leonard, Macdonald, McLean, Monette, Paterson, Power, Robertson, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt, Wall, White and Woodrow.



Mr. T. D. MacDonald was heard in further explanation of the Bill.

Clause 14 stands.

Clauses 15 to 18, both inclusive, were carried.

Clause 19 stands.

Clauses 20 to 23, both inclusive, were carried.

At 10.00 p.m. further consideration of the Bill was adjourned until tomorrow, Thursday, August 4th, 1960, at 10.30 a.m.

---

THURSDAY, August 4, 1960.

At 10.30 a.m. consideration of the Bill was resumed.

*Present:* The Honourable Senators:—Hayden, *Chairman*; Aseltine, Bois, Brunt, Burchill, Crerar, Croll, Dessureault, Golding, Gouin, Hugessen, Kinley, Lambert, Leonard, Macdonald, McDonald, McLean, Monette, Paterson, Power, Robertson, Roebuck, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt, Wall, White and Woodrow.

*In attendance:* Mr. T. D. MacDonald.

The Hon. E. D. Fulton, P.C., Minister of Justice, was heard with respect to clauses 9, 12, 13, 14 and 19, of the Bill.

At 12 noon the Committee adjourned.

At 1.30 p.m. the Committee resumed.

*Present:* The Honourable Senators:—Hayden, *Chairman*; Aseltine, Bois, Brunt, Burchill, Connolly (*Ottawa West*), Croll, Dessureault, Golding, Gouin, Hayden, Horner, Hugessen, Kinley, Lambert, Macdonald, McLean, Monette, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt, Wall, White and Woodrow.

*In attendance:* Mr. T. D. MacDonald.

The Minister of Justice was further heard in explanation of the Bill.

The Honourable Senator Power moved that the Bill be amended as follows:—

*Page 7, lines 5 to 26, both inclusive:*—Strike out lines 5 to 26.

The question being put on the said motion the Committee divided as follows:—

YEAS:—6

NAYS:—13

The motion was declared passed in the negative.

The Honourable Senator Hugessen moved that the Bill be amended as follows:—

*Page 9, lines 20 to 44, both inclusive:*—Strike out lines 20 to 44.

The question being put on the said motion the Committee divided as follows:—

YEAS:—8

NAYS:—15

The motion was declared passed in the negative.

Clauses 9, 12, 13, 14 and 19 were carried.

It was resolved to report the Bill without any amendment.

At 2.15 p.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,  
*Clerk of the Committee.*

## THE SENATE

### STANDING COMMITTEE ON BANKING AND COMMERCE

#### EVIDENCE

OTTAWA, Wednesday, August 3, 1960

The Standing Committee on Banking and Commerce, to whom was referred Bill C-58, to amend the Combines Investigation Act and the Criminal Code, met this day at 11.10 a.m.

Senator Salter Hayden in the chair.

The CHAIRMAN: Honourable Senators, we have with us this morning Mr. T. D. MacDonald, Director, Combines Investigation Branch, Department of Justice. We also have Miss Isabel Atkinson, National President of the Canadian Association of Consumers, and Mrs. I. Winkler, Executive Director, Canadian Association of Consumers. May I suggest that we hear the representatives from the Canadian Association of Consumers before we proceed to any particular consideration of the bill and before we hear from Mr. MacDonald.

Hon. SENATORS: Agreed.

The CHAIRMAN: I would ask Miss Atkinson and Mrs. Winkler to come forward. Miss Atkinson, I understand you are going to read a brief?

Miss ISABEL ATKINSON, *President, Canadian Association of Consumers*: It is a very short one and I think it would be advisable to read it.

The CHAIRMAN: Yes. If you are interpolating anything the reporters will get it as you go along.

Miss ATKINSON: May I say in introduction that the Canadian Association of Consumers, and its executive, greatly appreciates the opportunity to present its case to the honourable senators on this occasion, and to other Government officials as opportunity offers. We feel that we are getting an extra dividend, in a sense, for our membership because we are becoming much more familiar with the way in which legislation which affects consumers is, in the first place, passed, and in other cases administered, and perhaps, in this case, amended.

May I be permitted to say that for myself I have been associated with the Canadian Association of Consumers for ten years now and have been associated with earlier representations on the principle which is now called into question.

Hon. Mr. THORVALDSON: Before you proceed with your brief would you tell us the membership of your association?

Miss ATKINSON: We have a direct membership of approximately 30,000 people to whom we send monthly bulletins or newsletters of consumer interest.

Senator THORVALDSON: Does that membership pay a fee?

Miss ATKINSON: They pay a fee, yes.

Senator THORVALDSON: Each one of the 30,000?

Miss ATKINSON: About 19,500 pay a direct fee and, in addition to that, we have associated with us in what we call a group membership a large number of rural women's organizations and others which pay a group membership fee.

Senator THORVALDSON: What are the amounts of these fees?

Miss ATKINSON: The individual membership fee is \$1 per annum, which puts it within reach of practically every woman consumer that we can reach; and the group membership fee is \$5 per annum. It does not cost as much to service a group; that is, a group may have 10 to 40 or even more members, but we can service it for the \$5, whereas it does take up more of our time to service the individual member at \$1 a year, because that membership gives them the benefit of local, provincial and national organization services.

Senator THORVALDSON: Where are your headquarters, in Ottawa?

Miss ATKINSON: Our headquarters are in Ottawa. We have provincial branches in every province but Newfoundland. We have not had money enough yet to go to Newfoundland to organize there.

Senator MACDONALD: But you have members there?

Miss ATKINSON: We have some members there, yes sir; and we have about 80 or perhaps more local branches in towns and cities across the country. Does that answer your question?

Senator THORVALDSON: Yes.

Senator FERGUSON: May I ask if Miss Atkinson will mention the liaison with national organizations?

Miss ATKINSON: Yes, our organization was originally founded largely as the result of the activities of the National Council of Women, which marshalled forces of the chief national womens organizations in Canada. We have a very close association with them, and many of our members are enrolled from their membership by members of that organization. Their national executive appoints representatives to our board. They are notified of all our proceedings and have an opportunity to endorse and also to contribute to policy-making decisions. We feel that there are probably reached in an indirect way through this organization something like 500,000 women. One alone has over 200,000 members, and another has over 100,000 members. The others are not so large, but they have very substantial membership and they have a keen interest which is increasingly alive, shall I say, in consumer problems, which are of course becoming increasingly serious.

Senator ASELTIME: May I ask if this brief that you are about to present is the same brief that was presented to the committee in the other place?

Miss ATKINSON: It was presented in the other place, and I spoke to the committee in the other place, too. It is a much shorter brief, and other briefs that have been presented in other years on the same subject, and to which it refers, have been placed on file as being part of our policy—a continuing policy on this subject.

Senator FERGUSON: This is the same brief that was presented to the committee of the other house?

Miss ATKINSON: Yes, exactly the same brief.

The CHAIRMAN: Would you care to present your brief, Miss Atkinson?

Miss ATKINSON: I shall be happy to do so.

1. This submission will be limited very largely to a consideration of clause 14 of Bill C-58, which amends section 34 of the Combines Investigation Act prohibiting the practice of resale price maintenance. The reason for this limitation is not that we necessarily approve of the remaining amendments but rather that many of them involve technical issues relating to the jurisprudence in combines cases and complex economic considerations which require a degree of specialist knowledge that is beyond our competence and our limited budget.

2. The C.A.C. has on numerous occasions—beginning with our original submission in November, 1951, and continuing at intervals up to our latest submission in April, 1960—made representations to officials or Ministers of the



Government, expressing our firm and unqualified opposition to the practice of resale price maintenance in any form or degree. This opposition was, and is, based on a careful analysis of the fundamental and general consequences of the practice as well as on its impact on the specific interest of the consumer. We make no apology for emphasizing the consumer interest since it undoubtedly comes closer to representing the "public" interest than does that of any other group. Our representations have been repeatedly reaffirmed by our provincial and local branches, and by delegates to our national annual meeting from both C.A.C. branches and participating organizations.

3. We would first raise a question as to the grounds for *any* amendment of Section 34 at this time. In view of the findings of the careful and exhaustive analysis of "loss-leader" selling by the Combines Branch, which culminated in the report of the Restrictive Trade Practices Commission, we fail to understand on what objective facts an amendment is being proposed which will restore in a particularly desirable form the right of suppliers to withhold supplies from retailers who engage in so-called "loss-leader" selling.

May I say that the brief states "desirable form"; it is a desirable form to the retailers and those who are asking for it, but it is an undesirable form to the consumers.

Allegations as to the extent and seriousness of "loss-leader" selling should, at the least, be once again examined by the Commission before such a crippling amendment is considered. Indeed, we would go further and contend that the practice of announcing and advertising "suggested prices"—sometimes they are not even designated as such—should be examined by the Commission to determine how far it is, in fact, being used as a device for maintaining resale prices. It is our strong impression that in many fields such "suggested prices" are effectively undermining the prohibitions contained in Section 34. If price competition has made any inroads into the pricing practices of the pharmaceutical trade, to take as an example a trade which is most vociferous in its demands for resale price maintenance, few consumers are able to detect the fact in the prices they are obliged to pay.

Turning now to the amendments to Section 34, it appears, on the surface, that the ban on resale price maintenance is not being eliminated but rather certain pricing, servicing and advertising practices are being brought under a limited control. Closer examination, however, makes it clear that successful prosecutions against "dealers" who enforce resale price maintenance will be most unlikely if these amendments are adopted.

Under proposed sub-section (a) "no inference unfavourable to the person charged" with attempting to enforce resale price maintenance shall be drawn if "he and any one upon whose report he depended had reasonable cause to believe and did believe" that the seller made a practice of using the articles supplied as "loss-leaders". "Loss-leader" selling of a product is defined as being "not for the purpose of making a profit thereon but for purposes of advertising". But at what level is it considered that a profit is being made? And why should the seller be forced to make a profit on the item in question rather than on his stock as a whole? And who should decide? These are surely basic questions and the only answers that seem at all likely are very disturbing to our members.

5. With reference to the definition of "loss-leaders" proposed in the amendments, it is clear that the supplier who wishes to enforce a policy of resale price maintenance can defend himself against a charge under section 34 if the seller of the article in question does not charge a sufficiently high price to cover his costs of operation plus something for profit. Obviously, the supplier has no way of knowing what the costs of the individual seller are, but he does have access to reports made by trade associations and by the Dominion Bureau of Statistics on the average cost of operation for the trade in question.



Sales which do not make possible the earning of such a mark-up will provide a plausible basis for the supplier's "belief" that the article was not sold for the purpose of "making a profit thereon". It might be added that this was the definition of a "loss-leader" that was favoured by almost every trade association making public representations before the Restrictive Trade Practices Commission in the "loss-leader" inquiry.

In the anti-competitive atmosphere which has developed in certain distributive trades and industries, it is but natural that a man who makes a price lower than the bulk of his fellows will be suspected of having failed to count all his costs. If this frame of mind is to be encouraged by legislation of the type we have here, what then will happen to the innovator who develops a cheaper method of distribution—e.g., the discount house, or even the seller who is able to perform the standard functions of distribution more efficiently?

6. Then, too, there is the notion—one that can only be adequately described as "dangerous"—that a seller must sell a product to "make a profit thereon". Since the only basis known to the supplier of determining whether or not a profit is being made is the average cost of operation for the trade in question, all items sold below that level are presumably being sold as "loss-leaders" or "for the purpose of attracting customers to his store in the hope of selling them other articles". It will apparently come as something of a shock to those who drafted this legislation to discover that a number of staples in the grocery trade are sold at very low mark-ups—from one-quarter to one-half of the average for the grocery trade. Among these are: butter, coffee, tea, eggs, sugar, flour and margarine. One of the things that has to do with this question—and I know it from having been in business—is the difference in the rapidity of turnover, which makes it possible to sell some of these articles at a narrower than average margin.

Continuing:

[See the Green Book on "Loss-Leader" Selling, pp. 75-94]. The suppliers of all these, and other, grocery items would be in a position to enforce resale price maintenance on grounds provided under clauses (a) or (b) of the proposed new sub-section (5). It is surely ill-conceived legislation which makes possible such unwise interference with competitive pricing practices; nor is there reason to believe that this condition applies only to the grocery trade.

7. The other grounds on which a supplier can claim protection against a charge of enforcing resale price maintenance are equally open to manipulation. Trade journals, such as the *Hardware and Metal and Electrical Dealer*, and individual appliance dealers never tire of emphasizing that only by charging the "regular price" is it possible to provide "service" on electrical appliances. Hence, the supplier can plausibly claim to have "reasonable cause to believe" that those dealers who sell for less than the "regular price" do not provide "the level of servicing that purchasers of such articles might reasonably expect". What about the dealer who reduces his selling price and provides no service to buyers, who then purchase their servicing elsewhere at less than the reduction in price he has received? Are all consumers to be forced to pay for a level of servicing that "purchasers"—a generalized entity—"might reasonably expect?" Surely, one of the purposes of enacting the ban on price maintenance was to give consumers a choice as between limited and full-service dealers with an appropriate price differential. This choice clause (d) could effectively deny them.

In summary, it is our firm opinion that the amendments to Section 34 proposed in Bill C-58 will effectively undermine the prohibition of resale price maintenance. Furthermore, it appears to establish powers to enforce resale price maintenance which would have been of doubtful legality before Section 34 was enacted.

10. There is an aspect of the powers and procedure established by this amendment which seems to us to be altogether undesirable and distasteful. The manufacturer is given a degree of power to control the retailer by intimidation which should not be permitted. The manufacturer can cut off supplies to any retailer if there is "reasonable cause to believe" that he is engaging in any of the four practices set out under sub-section (5). How does the retailer protect himself against such action by the manufacturer? Must he go through the courts? If so, how many dealers are prepared to do so, and how many can afford to face the costs of appeals which the powerful manufacturer will resort to? In effect, the manufacturer, as we see it, will enforce this section of the Combines Investigation Act, not in the interest of the consumer or the public but, in his own interest. This can only be described as a most extraordinary state of affairs.

11. Finally, we wish to comment on the reason given for this, and other, amendments to the combines legislation, that it is designed to protect the small dealer. We dealt with this matter in some detail in our original submission on resale price maintenance in November, 1951; thus our present comments will be less detailed than they would otherwise be.

Essentially, it is well-established that even a thorough-going system of resale price maintenance will provide little protection for retailers unless freedom of entry is controlled and freedom to increase services is controlled. When competition in price is prohibited and entry is restricted, dealers, in order to attract customers, will provide more and more services, many of which will be of little advantage to consumers. Net profit will decline and the stage will be set for a demand for a greater margin. This is not a theoretical possibility but is an established type of development, noted by Dean Grether and other authorities on resale price maintenance. When entry is not controlled, new retailers will be attracted by the apparently substantial margins; volume per retailer will decline and net profit will decline. This also is a clearly established type of development, which is recognized by many Canadian retailers.

12. The only protection for the small retailer that can be derived from resale price maintenance is of a short-run character and is purchased at an inordinately high cost on the part of consumers. It is our contention that assistance for small dealers should be found in other directions. There should, first, be effective protection for the small dealer against unfair and uneconomic price discrimination. In view of the negligible use which has been made of Section 412 of the Criminal Code, we feel that it is of little value in this respect. Second, we feel that mergers which result in undue concentrations of market power undoubtedly place the small dealer in a weak position. We can only view with concern the failure of the Combines Branch to take any action against recent mergers and concentrations of control among super-markets.

Respectfully submitted,

Isabel Atkinson.

The CHAIRMAN: Are there any questions honourable senators wish to ask Miss Atkinson?

Senator GOUIN: On page 4 of your brief you use the word "entry". Would you care to define that word a little more?

Miss ATKINSON: That is referred to in a later paragraph. What is meant is the opportunity for anyone to enter into the business.

Senator GOUIN: Thank you.

Miss ATKINSON: In some cases legislation restricts entry to those people who can obtain a licence. I think that is the practice in New Zealand and Australia but in this country anyone can go into business at present, entry is not restricted.



Senator MACDONALD: Miss Atkinson, I understand there was one amendment made in the committee of the other place with respect to the term unfair disparagement against any product. Do you recall the section to which I refer?

Miss ATKINSON: I think that was subsection (e), which was withdrawn.

Senator MACDONALD: I have not a copy of the bill as originally presented. Would you tell us what it involved?

Miss ATKINSON: Subsection (e) read, "that the other person was unfairly disparaging the value of articles supplied by the person charged, in relation to their prices or otherwise", and that subsection was withdrawn from the bill.

Senator MACDONALD: Your brief makes reference to that amendment but you did not read it.

Miss ATKINSON: I omitted reading it.

Senator MACDONALD: You are against that clause too?

Miss ATKINSON: We were against the whole thing because it is not practical.

Senator MACDONALD: And by eliminating that clause it did not make the section satisfactory?

Miss ATKINSON: No, sir. There are really other sections to which we object even more strongly.

The CHAIRMAN: I take it the section is still unpalatable.

Miss ATKINSON: Very much so, Mr. Chairman.

The CHAIRMAN: Are there any other questions?

Senator LEONARD: Since section 34 has been put in the bill do you think the result has been beneficial?

Miss ATKINSON: I think it is quite definitely a fact that the ban on resale price maintenance made it possible, and not only possible but did lead to a definite lowering of prices and much more competition in certain lines.

The CHAIRMAN: What lines have you in mind, Miss Atkinson?

Miss ATKINSON: I am thinking of what is very popularly called lines of durable goods—stoves and refrigerators and things of that type. But I also noticed that there were many other things. For instance, I notice that vitamins and goods of that kind were sold in some cases at lower prices, that is, they were not always the same price in every drug store. There was a beginning of price competition and that is so in many other fields.

Senator CROLL: Miss Atkinson, from the point of view of the consumer, am I wrong in believing that supermarkets are a boon to them?

Miss ATKINSON: I am rather familiar with the development because I happened to be in business, Senator Croll, and in the beginning of course the non-service store, which was the very beginning of what eventually developed into the large supermarket, the elimination of service, for instance, they were called cash and carry and self-service stores, well, the elimination of that service in the grocery field, in the food industry field I should say, very materially reduced the mark-up. Where the average had been from 25 per cent to 30 per cent mark-up on cost, it became as low as 14 per cent to 15 per cent on cost. Now today costs are not figured in that way, they are figured as a proportion of the selling price. I have not the figures before me but I believe that 15 per cent on costs in terms of selling price would be about 17 per cent on cost, 2 to 3 per cent more. It sounds better when you speak about it on that basis, and from the accounting point of view it is simpler. However for a long time there was a difference, and then I think the independents who were efficient and good businessmen adopted many of the practices of the large

market which developed from the self-service store, and they began to have co-operative wholesale services which enabled them to compete. Actually there has been a revolution in distribution as we are all aware and at the present time I believe that the supermarkets are competing not only on the basis of price but even more on the basis of sales promotions of various kinds which are on a large scale, and sensational and so on. At the same time I do believe that with the increasing urbanization of our country that unless we had a development of large-scale food distribution we could not have had the quality of service and economies of service that we have today. Probably 30 per cent of the food industry is still in the hands of independents and they are much more efficient than they once were, and another, perhaps 35 per cent is in the hands of independents which are associated in voluntary chains whereby they lose some of their independence. An increasing proportion is handled by the supermarket. It does give an economical service but it is becoming so powerful that I think some of its methods of competition, particularly these high-powered sales promotion schemes, are costing perhaps a little bit more than the consumer should have to pay out of the food bill. Even one per cent on the food bill of Canada is a very, very heavy toll. We spend \$5 billion per year on food, \$4 billion of which is bought from food stores and perhaps \$1 billion is accounted for by meals purchased in hotels, restaurants and other such places. But even one per cent added to the cost of distributing \$4 billion of food is not only a burden to the homemaker but has a tendency to be inflationary, I believe, and is a burden on the economy.

Senator THORVALDSON: Senator Croll asked a rather simple question which I think you could answer fairly briefly. I think his question was do you—and I would add “consumers generally”—consider that the development of the supermarket is a boon to the consumer, the public generally. Could you give a yes or no to that, or something approximating it?

Miss ATKINSON: Well, people do not say things are a boon to them but they use them.

Senator THORVALDSON: Are they good for the public? Are they good for the consumer?

Miss ATKINSON: The fact that the public uses them largely indicates they appreciate or consider the service of value.

Senator THORVALDSON: Have you as the national president of the Canadian Association of consumers got an opinion in regard to whether they are a boon to the public and to the consumer generally?

Miss ATKINSON: I do not like the word boon.

Senator THORVALDSON: Benefit.

Miss ATKINSON: I consider it an effective and perhaps an essential part of the food distribution in Canada today.

Senator THORVALDSON: Are they desirable to the public generally?

Miss ATKINSON: They are desirable just as many other things are desirable so long as they do not become too dominant.

The CHAIRMAN: If they are essential I should think they are desirable, senator.

Senator MACDONALD (Brantford): Provided there are enough of them.

Miss ATKINSON: There are almost too many of them now because since the Gordon Report was published everybody is thinking that by 1970 there will be a greatly increased population and they must prepare to serve it and they want to get in there first. Getting the right site for a food store is very important, and the result of all this is that there has been a great expansion in building of outlets. The *Canadian Grocer*, which is a trade journal, announced recently that one chain was going to build 150 new outlets. They are



building them perhaps not for the population of today but for the population of 1970, but as soon as they get them built they want to make them pay and therefore they begin to use these highly sensational forms of sales promotion in order to get as much business as they can.

Senator MACDONALD (*Brantford*): I suppose if there is enough competition amongst the different chains, that would be beneficial to the consuming public?

Miss ATKINSON: There is a great deal of competition. I would rather see more of it on the basis of price and less on the basis of high-cost sales promotion.

Senator MACDONALD (*Brantford*): I notice that towards the end of your brief you refer to your fear of combinations among these chain companies.

Miss ATKINSON: I think it is possible that some of them may become so powerful in certain fields they may acquire too dominant an interest. Most of them are not operating across Canada. Safeways, for instance, operate from the Great Lakes to the Pacific coast. Some of the other familiar firms operate mainly in the central provinces and, to some extent, are spreading eastward and they are also now beginning to reach out to the western part of the country.

Senator BRUNT: Is it not true that Loblaw's operate right across Canada?

Miss ATKINSON: They recently acquired interest in the prairie provinces, and I understand they are moving into British Columbia.

Senator GOVIN: What is the meaning of the term "discount house"? In your last paragraph on page 2 you refer to a discount house. I do not understand the meaning of that expression.

Miss ATKINSON: Frankly I do not like the term but it is applied to the kind of store which handles what are called durable goods, electrical appliances, and so on, and it handles them more directly. It is something like the supermarket moving into that field. Over the years there has been a long chain of many links between the manufacturer and the consumer in connection with, say, electrical goods. There were provincial agencies, district agencies, local warehouses, and so on. Well, the discount house bypasses them.

Senator McLEAN: That is right.

Miss ATKINSON: It eliminates much of the cost. Frequently it announces it will not provide service. I know that in the mid-western United States there are people who will buy goods from a discount house in New York, for instance, and they do not accept service on them but they pay less for the commodities. The *Financial Post* announced some four or five months ago that some big real estate operator planned to build a chain of such businesses in Canada. I do not know whether that will be so or not. They are operating on a smaller scale in Canada but it is an extension of the practice of eliminating some of the links which have existed between the manufacturer and the consumer. I might say here that I think there is a need for streamlining in all fields of consumer goods distribution. The latest figures I saw in regard to the cost of operation of big department stores, for instance, suggested that the cost was from 28 to 33 per cent of selling price, which meant 50 per cent on cost, and the markup was from 33 or 34 per cent to 38 per cent, which is a very heavy markup. That is an average markup I think in this revolution in distribution, other fields besides the food industry will be reached. I must say I cannot help feeling that this move to try and get some control of retail prices, the prices that the dealer and the retailer sell at, is really a move to arm certain factors in the field against competition which they can foresee.

The CHAIRMAN: Any other questions?

Senator CRERAR: I would like to ask Miss Atkinson some questions. Do you think there is a psychological factor involved in the big super markets

or large chain stores? I ask that question because it relates to an experience I had not long ago. A lady who had been living in England for ten years returned and went into one of the supermarkets. She described that everything was very attractively displayed and the psychological impact was to induce her to buy. She came out of the store and said, "I don't like this place. The pressure to buy is tremendous." Is that not part of the change that is taking place in the whole distributive trades set-up? I know of another case where a housewife by driving another quarter of a mile could have gone to a market which, although its produce was not attractively displayed it was excellent, and where she could buy vegetables substantially cheaper than she could in the general store. Yet she went to the general store to make her purchases. How do you explain that?

Miss ATKINSON: Well, I think a combination of influences—not just one alone, Senator Crerar. There is no doubt at all that these big organizations have commanded very able citizens in their public relations. They make use of psychology, and I deplore many of the uses that they make of it; but I do not think that that is the only thing. For one thing, convenience—what they call one-stop shopping is a great attraction, a great help to the mother of a family with several children who cannot go shopping very often and wants to get everything in one place.

Senator CRERAR: Do you think it is possible to set up defences against psychological influences by law?

Miss ATKINSON: No.

The CHAIRMAN: Well, Senator Crerar, would you want to set up defences against psychological influences?

Senator CRERAR: No.

The CHAIRMAN: People use that in speeches sometimes.

Miss ATKINSON: I think the protection against psychological influence depends on education. Our organization has as one of its motives the education of consumers. It has been almost impossible for us to get funds to do more than a small fraction of the work which we can see is just clamouring to be done in this field. We don't want to be too dependent on any powerful organization, either Government or industry, or trade, or anything else, and a voluntary organization like ours does not have the funds to pay for an organizer which would help us to get a basis in fees from individual consumers, and therefore our growth is slow, but we are utterly convinced that education is tremendously important. Now, the industries to which you referred, the distributive trades, spend hundreds of millions of dollars a year in every kind of advertising, a lot of it psychological in its impact. We would very much like to see provided, and we attempt to persuade where we have the opportunity, informational material in their advertising.

Senator CRERAR: Please do not misunderstand me, because I am a firm believer in your organization. As a matter of fact, I occasionally give financial help.

Miss ATKINSON: I appreciate all support, Senator Crerar, and I might say especially support like yours, but the fact remains that some of this money which is spent on advertising should really be spent on advertising of an informative and educational type, and some of it is of a pretty small proportion.

Senator CRERAR: Do you think it will be helpful to put a tax on advertising? The Minister of Finance is struggling to find revenue.

Miss ATKINSON: I am not an authority on legal matters. I feel that people are too easily prone to say "There ought to be a law". Laws do not really perform the functions necessary. You need an intelligent public opinion. But there are times when the law can protect the consumer. What we really need,

and which could be perhaps provided by the Government—we have established divisional standards, and we have a Bureau of Specifications—is that if some of the specifications and standards established usually for goods and used by the Government and sometimes for the benefit of trade and industry, were extended to consumer goods, we feel that the time has come that that is very desirable and that will be one way of educating the consumer. We go in to buy something and we are told that if we ask for some things by the brand name we can rely on what we get. That is not so, because there is nothing to require that people who adopt a brand name, and may perhaps wish to make it very significant, to register in any way; they do not have to bring their brand specifications up to any standard. There is no protection.

The CHAIRMAN: We are going into another subject, Miss Atkinson, and I think we have enough problems in the bill before us.

Miss ATKINSON: That is quite true.

The CHAIRMAN: Senator Wall?

Senator WALL: I want to just clarify whether I understand exactly what the brief means. The definitions which are provided for, the definitions for the withholding of supplies by a supplier, are in the estimation of your organization very definite—very loose?

Miss ATKINSON: Very.

Senator WALL: And they are vague and almost incapable of measurement or adjudication. Would you say that kind of a measurement or adjudication would lead to a kind of private discipline—almost a kind of private law?

Miss ATKINSON: Well, I do think it gives authority to the manufacturer to impose his will on the dealers in a way which would almost certainly be to the detriment of the consumer.

The CHAIRMAN: He must always take the risk, though, that a court might find its way through this diffused language and penalize him?

Miss ATKINSON: Yes, if the dealer was in a position to fight against the refusal of supplies; but the dealer is usually not in a position to take court action.

Senator WALL: Is it the considered opinion of the association that this definition would have a tendency to limit competition at the retail level?

Miss ATKINSON: That is what we fear.

Senator WALL: Let me ask you this: Is it the opinion of the association that one of the problems that we have is false or misleading advertising? Now, for example, I was in Winnipeg just a few days ago, and I drove down the street and saw a big neon sign, "Ladies' straw shoes—Regular \$4.95". Then it said \$1.79, or whatever the figure was. Is that one of the problems, and would you think that one of the sections that is in this bill dealing with this problem might help the situation? Is that a problem that you have considered?

Miss ATKINSON: I think it is a very general situation, a situation that would be difficult to deal with by law. I am not very competent to say whether such a law could be enforced.

The CHAIRMAN: Well, I should point out that there is such a section.

Miss ATKINSON: I know there is a section.

The CHAIRMAN: There is a section that reads pretty specifically, on page 9 of the bill:

"33C. (1) Every one who, for the purpose of promoting the sale or use of an article, makes any materially misleading representation



to the public, by any means whatever, concerning the price at which such or like articles have been, are, or will be, ordinarily sold, is guilty of an offence punishable on summary conviction."

That is pretty clear and specific.

Senator Fergusson, you wanted to ask a question?

Senator FERGUSSON: Mr. Chairman, I would like to say that it seems obvious that Miss Atkinson has had experience beyond what she has gained as President of the Canadian Association of Consumers. I wonder if she would care to tell the committee what business experience she has had.

Miss ATKINSON: Gentlemen, I happen to be one of those persons who has worked in a great many fields: I worked at a bench, on piece work, in manufacturing and in wholesale. I had 30 years' experience in a retail business in the province of Saskatchewan, during much of which time business was very poor and difficult to operate. We had tenures of difficult times in the thirties and even before that, when business was not good. I was with an operation in one of the small towns, but even there we had competition from one of the chains during part of the time.

So, I am somewhat familiar with the business side, and know of many of these problems. My field was accounting and office management. I would say, however, as to the financial management of business, during most of the time we did not have much finances to manage—it was rather how to run a business without money.

The CHAIRMAN: Heavy on bookkeeping and short on money?

Miss ATKINSON: Exactly.

The CHAIRMAN: If there are no further questions, thank you Miss Atkinson and Mrs. Winkler.

Miss ATKINSON: Thank you. May I say again, our organization is very appreciative of the opportunity of presenting the case for the consumer to a body like this. We trust also that this will make you a little better acquainted with what we are trying to do and the aims and objects of the Association of Consumers.

The CHAIRMAN: We will now call Mr. T. D. MacDonald, Director of the Combines Investigation Branch.

Senator CROLL: Mr. Chairman, it just occurs to me that in my recollection there were many people who appeared before the House of Commons committee in opposition to the bill in some form or other—for instance, the gasoline station people, and various others who had something to say about the bill. On the other hand there were persons who spoke in favour of the bill. I assume Mr. MacDonald will argue in support of it. My question is, where are these people who were heard in the other place, so that we may hear them and question them as we have heard the consumers? Should they not be given an opportunity to be heard, or some indication given to them that we are prepared to hear them? We might be influenced by what these people have to say.

The CHAIRMAN: We have had no other requests from persons who wish to be heard.

Senator CROLL: I appreciate that you would hear them if they requested to be heard, but do they know that we are prepared to hear them?

Senator BRUNT: What do you want us to do, put an ad in the paper?

Senator McLEAN: Certainly we should notify them.

Senator CROLL: Put two ads in the paper, if you want to. We have a function to perform here in dealing with this bill, and are we to assume that only the consumers are opposed to certain parts of it?



The CHAIRMAN: If the committee feels that there are additional representations which we would like to hear, we can send the people a wire, but they would have to come reasonably quickly.

Senator BRUNT: Could we not read the reports of the committee in the other place? We have had presented this morning the identical brief that was presented in the other place. We can read them, as long as we don't make speeches about them.

Senator CROLL: Mr. Chairman, it is not the reading of the reports, it is the questions on them that bring out the facts.

The CHAIRMAN: That is right.

Senator CROLL: There are many people around the table who could ask questions about these reports that might throw a different light on them. I realize time is short; we did not know we would be in committee until yesterday. Would it be possible to give some of these people an opportunity to be heard? Or am I right in thinking that the people who were heard before the commons committee assume that we rubber stamp what the commons committee did?

The CHAIRMAN: Certainly it is a false idea, if they have it.

Senator CROLL: I would hope they do not have such an idea.

The CHAIRMAN: I will have a look at the representations, and I will ask Mr. Armstrong to look at them, and pick out some of the names.

Senator CROLL: For instance, the farm group have a representative in Ottawa, as has the Canadian Labour Congress and the retailers. As a matter of fact, let us stop fooling ourselves, they all have representatives in Ottawa and they have been following this bill with a great deal more interest than they are given credit for.

Senator LAMBERT: On that score, surely their interest is sufficient to prompt them to come here and say what they have to say. There never has been any objection to hearing people who want to come.

Senator CROLL: That is true, but we only gave the bill second reading last evening at 11.30, and we are in committee this morning. Have they had ample opportunity to know about it?

The CHAIRMAN: The organizations you have mentioned have representatives in Ottawa, and they could easily be contacted by telephone and say whether they wish to be heard. We can do that very easily.

Senator CROLL: Very well.

The CHAIRMAN: One point I should like to correct for the record. I am not sure that Mr. MacDonald is appearing at the moment to argue in support of the bill. I would rather feel that he is appearing to explain the scope and effect of it. He may ultimately get involved in an argument on some point, but that is his responsibility; his purpose here is to explain the whys and the wherefores of the prepared legislation. It is for us then to decide whether we think the legislation should be approved or not.

Senator BRUNT: Hear, hear.

The CHAIRMAN: Since there does not seem to be any particular principle running through the various sections of the bill, perhaps the best procedure is to take it section by section, and Mr. MacDonald can make whatever comments or explanation he wishes on each, if that is suitable to the committee.

On that basis, Mr. MacDonald, may we start off with section 1?

Mr. T. D. MacDonald, Q.C., Director of Investigation and Research under the Combines Investigation Act: Mr. Chairman, we go to clause 1. The definition of "article" is taken from the present provisions of the legislation. For example, subsection 2(a) of the Combines Investigation Act refers to "a combination

having relation to any commodity which may be the subject of trade or commerce." Likewise, going to section 411 of the Criminal Code, we have a reference to "article" which means, "an article or commodity which may be the subject of trade or commerce".

Now by a later part of the Bill, sections 2 and 32 of the Combines Investigation Act and section 411 of the Criminal Code, in so far as they relate to combinations, are consolidated into one section in the Combines Investigation Act, and for the purposes thereof, and of other sections, the word "article" is now defined in the definition section; it is an amendment of convenience only.

Senator CROLL: What words were used instead of the term "trade and industry" in the present act?

Mr. MACDONALD: Are you looking, Senator Croll, at sub-clause (2)?

The CHAIRMAN: We are dealing with clause 1 now.

Senator CROLL: It relates back to it.

Mr. MACDONALD: You mean trade or commerce?

Senator CROLL: Yes.

Mr. MACDONALD: "Trade or commerce" appears in section 2 of the present act in the definition of commodity—commodities which may be the subject of trade or commerce, and it also occurs in section 411 of the Criminal Code. The words are substantially the same.

Senator WALL: Mr. MacDonald, May I ask this question? In terms of these two definitions, the Combines Investigation Act will not cover any service business as such. In other words if a combine were to begin in the hotel business or in the motel business or in some other service business sector of our country the Combines Investigation Act, according to this definition, would not lie.

Mr. MACDONALD: That is substantially correct, Senator Wall and in that respect there is no change brought about by the amendments. The present legislation does cover certain specific services. You will find for example in the present act a reference to transportation and a reference to storage and a reference to the price of insurance upon persons or property, and there is one other; but with those exceptions, the act does not extend to the service sector.

Senator WALL: In view of the fact that we are making such a revision of the act, is there no problem arising in that service sector to which we should be giving our attention, and therefore provide for it by law?

Mr. MACDONALD: Well, that is a policy matter I think, Senator Wall, outside of these amendments.

The CHAIRMAN: We have the definition of "business", as well as "article". The definition of business is made up by taking the words out of the present sections of the act?

Mr. MACDONALD: That is correct.

Senator KINLEY: Mr. Chairman, may I ask if an article—which means an article which may be the subject of trade or commerce—include wheat or fish?

Mr. MACDONALD: Yes, it would include wheat or fish except of course to the extent that wheat or fish or any other commodity was dealt with under a marketing scheme set up under valid provincial legislation. To that extent it would not be covered by the provisions of the act.

Senator BRUNT: It would certainly cover fish because you put section 23 in.

Senator KINLEY: Fish are left out of section 23.

Mr. MACDONALD: In a limited area and for a limited period.

The CHAIRMAN: It is amusing to note how under criminal law you can move things in and out, like in a game of checkers. However, that is the way it is done.

Senator KINLEY: Mr. Chairman, as to co-operative selling—

The CHAIRMAN: We will come to that section later.

Shall subsection (1) of section 1 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: In subsection (2) of section 1, we have the definition of "merger" and "monopoly". What comment have you there, Mr. MacDonald?

Mr. MACDONALD: In this case, as a result largely of moving the combination provision of the Criminal Code into the Combines Investigation Act it became convenient and desirable then to break up the remaining parts of the definition in the Combines Investigation Act, which had previously embraced combination and merger and monopoly, into further component parts, being here a merger and a monopoly. In the case of the monopoly definition the words are substantially as they are in the present act. In the case of the merger definition, advantage was taken of the opportunity to direct the attention of the court to certain areas where it might look for the elimination of competition—areas which were probably already present in the previous definition but not pointed up so conspicuously as they are in the new definition.

Senator BRUNT: Does this definition enlarge the meaning of merger?

Mr. MACDONALD: I would say rather, Senator Brunt, that it clarified and pointed up the definition without enlarging it.

Senator LAMBERT: It really enlarges the meaning of "combine".

Mr. MACDONALD: This one deals with merger.

The CHAIRMAN: Combines is covered in a different section.

Senator LAMBERT: I am very much interested in the introduction of the word "merger" into this bill because my own feeling is that the wording of the present act bears upon the whole question of the restraint of trade, in a more detailed and effective way than to include the idea of a merger resulting from a financial interest in a business. I think the distinction between merger and combines, although you define monopoly later, is an indulging one.

Mr. MACDONALD: Yes. In view of the fact that these terms will be used from time to time in the course of the discussion, and in view of the fact that in the past "combines" has been used in the act in the comprehensive sense of including combination and merger and monopoly, perhaps I might make the suggestion that, in order to keep the discussion clear, we use the terms in this sense: "monopoly" in the obvious sense, "merger" in the obvious sense, and "combination" to cover an arrangement entered into between otherwise independent firms.

Senator BURCHILL: What I find is a little bit misleading to the layman is that a great many mergers in Canada have been in the public interest.

Senator BRUNT: Beneficial mergers, in other words.

Senator BURCHILL: Well, the public interest too. Lord Beaverbrook would back us up on that.

Senator LEONARD: Were the words in this definition of merger "to the detriment or against the interest of the public" contained in the definition before, Mr. MacDonald?

Mr. MACDONALD: The definition before reads—and I will just read the part that is applicable to the merger—"Which merger has operated or is likely to operate to the detriment or against the interest of the public whether consumers, producers or others."



Senator KINLEY: There could not be a good merger.

Mr. MACDONALD: Oh, yes, there could be many good mergers.

Senator KINLEY: But not under this definition.

Mr. MACDONALD: In order to be condemned it would have to meet the test—perhaps this is putting it backwards—of lessening or being likely to lessen competition to the detriment of or against the interest of the public.

Senator KINLEY: That is defined as a merger?

The CHAIRMAN: No. You have a merger where one group may acquire a controlling interest in another group and they merge into a larger organization. Now, that in itself is not condemned under this provision. What it says here, though, is that if competition, as the result of the larger organization, is or is likely to be lessened in the various ways described, to the detriment of or against the interest of the public, then it becomes an offence.

Senator LAMBERT: But you have so many instances of industries and businesses which are not merged but which have an association by which they reach understandings in the restraint of trade or in the fixing of prices; they have nothing to do with a merger at all.

The CHAIRMAN: That may come in under the combination part.

Senator LAMBERT: Why introduce the merger at all? The main thing you are trying to get at under this legislation is the control of what you might call combines in the restraint of trade.

The CHAIRMAN: What you are suggesting is a combination.

Senator LAMBERT: I am not. I am trying to say that it may not be so at all.

The CHAIRMAN: I am quite happy to hear that—that it may not be.

Senator LAMBERT: By introducing the term "merger" I think you are confusing the main object of the legislation.

Senator POWER: As I understand it we are dealing with three things: a merger, a monopoly, and a combination, all defined; whereas under the old legislation a combine could include all three. Am I right in that?

Mr. MACDONALD: Yes, Senator Power, that is correct.

Senator WALL: May I take advantage of Mr. MacDonald's presence to ask him this question: The point was raised in the other committee that this definition might not catch what is called the conglomerate merger.

Senator BRUNT: What is that?

Senator WALL: Well, a merger which cuts across various industries and therefore you may have two or three such mergers which may be to the public detriment.

Senator BRUNT: Give an example.

Senator LAMBERT: A holding company.

Senator WALL: Yes.

Mr. MACDONALD: The test would be, in that case, as in any other case, whether that merger had the effect or was likely to have the effect of lessening competition to the detriment of or against the interest of the public. If it had that effect or was likely to have that effect, and if it was a merger, if it was an acquisition within the terms of the definition, then I see no reason why it should not be caught within the section. If it does not interfere with competition, to that extent then, as in the case of any other merger, it would not.

The CHAIRMAN: Mr. MacDonald, recently we had a judgment in Ontario in relation to a prosecution for a merger.



Senator BRUNT: I thought we were going to keep away from that.

The CHAIRMAN: I was wondering whether there is anything in the writing of the definition which is intended to affect in any way the scope or application of the judgment in that case? In other words, has this definition got more in it or less in it in order to meet the judgment in that case?

Mr. MACDONALD: This definition was not drawn up in relation to the case which you mention.

Senator BRUNT: It was drawn up entirely independent of it.

Mr. MACDONALD: I think that is a correct statement.

The CHAIRMAN: Then let me rephrase my question. If it was not drawn up in relation to this case is the effect of the definition as drawn such as in your opinion would affect that judgment, or the subsequent application of it?

Mr. MACDONALD: No, I don't think it would affect that judgment, Senator Hayden, because that judgment—perhaps I should not speculate in this area too much, but I think I may say that judgment was rendered on the basis that the particular industry concerned was so affected by provincial public control that it was withdrawn from the area to be protected under the anti-combined legislation.

Senator CROLL: I think it was said that the price was fixed by the Ontario Liquor Control Board.

Mr. MACDONALD: Yes.

Senator THORVALDSON: In other words, you would say there is really no change in the substantive law in regard to what is a merger as affected by this amendment?

The CHAIRMAN: He has not said that.

Senator THORVALDSON: I am putting it to Mr. MacDonald, whether that is the case in his opinion.

The CHAIRMAN: Maybe the form of the question is too much. I think rather so far as Mr. MacDonald is concerned he could say, if he wishes, whether it is intended—

Senator THORVALDSON: To affect the change?

The CHAIRMAN: Yes.

Mr. MACDONALD: May I put it this way: The minister explained this amendment as a clarification of the definition rather than a change in the definition; as directing the attention of the court to certain things which in all probability were contained in the original definition but which were not quite so conspicuously referred to; and not as changing the substantive law.

Senator THORVALDSON: That is my opinion. I think the present definition is a combination of your former definition and what the courts have said the law is. Is that a fair statement?

Senator LAMBERT: You do not use the word "combine" at all.

Mr. MACDONALD: I think I would go back to the statement, Senator Thorvaldson, that the amendment was drawn not as a substantive change in the law but as a clarification pointing up certain factors considered to be already within the present definition.

Senator THORVALDSON: That would mean exactly the same, but we said it in a different way.

The CHAIRMAN: Senator Thorvaldson, could I follow that up and ask Mr. MacDonald what are the things that are pointed up in this definition?

Mr. MACDONALD: The three things that are pointed up are that you may look for lessening of competition, subject always to whether it reaches the

required degree in the trade or industry itself, in the sources of supply of the trade or industry or, thirdly, in the outlets for sale of the trade or industry.

The CHAIRMAN: Yes, you have broken down the generalization that appears in the present act?

Mr. MACDONALD: Yes. I could exemplify that.

The CHAIRMAN: Will you do so?

Mr. MACDONALD: To take an example of the first case, in a trade or industry, an example would be the case where you had, say, six firms in a particular trade or industry and five of them supplied practically all the product of the trade or industry, and they merged. There the lessening of competition would take place simply in the trade or industry. Under the second—among the sources of supply of a trade or industry—you could have a case where one of several secondary manufacturers bought up all the sources of raw material upon which its competitors depended. Conversely, in the case No. 3, you could have as an example where the producer of a primary material bought up all the firms engaged in the secondary manufacture so as to deprive its competitors at the primary level of any outlets.

Senator POWER: Would that be a monopoly?

Senator THORVALDSON: Created by a merger.

Mr. MACDONALD: It might not be a monopoly, Senator Power but it could nevertheless be an acquisition within this definition.

Senator POWER: Monopoly means a situation where one or more persons either substantially or completely control throughout Canada or any area thereof the class or species of business; and the instance you gave us would be these people controlled by the suppliers.

The CHAIRMAN: It would be a merger leading to a monopoly, or resulting in a monopoly.

Mr. MACDONALD: I think I can clarify that. Under the "Monopoly" definition, the monopoly itself has to be a "business in which they are engaged and have operated such business or are likely to operate it to the detriment or against the interest of the public". Now, the monopoly definition has been and is directed primarily to the situation where the monopoly in its formation may not be illegal but where, though not illegally acquired, it then conducts itself in a manner detrimental to the public.

The CHAIRMAN: I am not sure of that, Mr. MacDonald, because in the definition of a monopoly the two things that may get you into trouble are that if after the monopoly has been created it is operated against the interest of the public or it is likely to operate against the interest. Now, how do you determine that it is likely to? Would you say that if a monopoly is created and continues, and it carries on in a way which is not against the public interest, then it would not come under this definition?

Mr. MACDONALD: No; there may be a certain amount of overlapping there, Mr. Chairman.

The CHAIRMAN: I mean, you look at the structure that results, and you may say, well, now they are not operating in a way that is in the public interest, but it could be operated in a way against the public interest.

Senator BRUNT: How could you ever prove that?

The CHAIRMAN: You would be surprised at the inferences courts will draw.

Senator LEONARD: May I ask this of Mr. MacDonald: When two companies do propose to enter into a merger and they believe that it is not to the detriment of the public, are there any provisions, or is there any machinery, whereby you can deal with that matter before the merger takes place?

Mr. MACDONALD: There is no express provision in the act for doing that, and indeed there is no express provision in the legislation of the United States—I will qualify this in a moment—or the United Kingdom, of the kind I think you have in mind. Now, what we do in the Combines branch, is that we make it clear that we are always ready to discuss problems with businessmen, their associations or their counsel, within proper limits. We cannot act as their solicitors; we cannot undertake to advise them on the setting up of a particular scheme, and that sort of thing, but if they want to come in and discuss with us the application of the legislation, then we try to do that in a sufficiently concrete way that they can take the result home and apply it to their own situation and arrive at a conclusion. Now, if a group of people asked for a discussion and put a certain situation before the Combines branch and said, "What about that under the act?" A number of results might follow. We might say, "Well, having regard to the manner in which we interpret the act and the jurisprudence we cannot see any implications under the anti-combines legislation at all arising out of the situation that you have described." Take the other extreme. We might say, "Having regard to the act and the jurisprudence, it would appear to us that what you contemplate is clearly illegal". Or we might take the middle ground and say that it is not the most clear cut case in the world either way—but we think it would probably put us upon inquiry. Now, if it were a merger—this sort of situation has occurred at least once in the past—the parties might come in and say: "We are contemplating a particular merger and we would like a general idea how it might be affected by the act, because we don't want to get involved in the act if there is any real question about it." And we have said, "We do think that it falls in the area where we would be called upon to make an inquiry"; and an arrangement of the following kind was worked out. We said, "We can't spend our resources investigating a situation merely on a suggestion, but if it is a feasible for you to do some overt act indicating definitely your intention, and you stop there for the time being, we would be prepared then, on that evidence, to go forward with a formal inquiry and wind it up as soon as possible, so as to get at least an expression of opinion from the Restrictive Trade Practices Commission before you have to move." We asked if they thought that was feasible. They said they thought it was. In that particular case they later abandoned it, but for another reason.

Senator BRUNT: As I understand it, you can go to the Department of Justice and get an opinion on a merger, as they do in Washington.

Mr. MACDONALD: Senator Brunt, I do not think they will go any further than I have indicated we will go. There is nothing in their legislation that provides that they may do so. There have been suggestions of pre-merger notification requirements, which I believe would then give some kind of exoneration to a merger that had been notified to the department, and not challenged. But without some such provision, which does not at the moment exist in the United States legislation, if they purport to give a binding opinion, they might have the situation that one group would go the department today and get an opinion, and next year there might be a change of feeling or a change of personnel—

The CHAIRMAN: You mean in the department?

Mr. MACDONALD: In the department. And an inquiry might be held. I have heard criticisms of the administration there on the ground that they have proceeded in one year with an investigation about a matter which the parties claimed they had been given some reason to believe was free of doubt in a previous year.

The CHAIRMAN: That would lead one to the conclusion that statutory authority should be provided in our act, under which a ruling could be obtained, and which could not be gone back on later.



Senator BRUNT: I know of a case where certain Canadians went to the Department of Justice in Washington and got a definite opinion one way, and another group from an entirely different industry got an opinion the other way, and both acted on them. In one industry they were told if they did this, it would contravene their anti-trust laws, and in the other case they were told they could proceed with it.

Senator HUGESSEN: That casts some doubt on the benefit of getting a definite ruling.

Senator BRUNT: But these were entirely different industries.

Senator THORVALDSON: Is not the situation here very similar to one under the Income Tax Act? For many years various organizations and people have been seeking a provision in the Income Tax Act whereby they could get a ruling beforehand. It has always been found to be inappropriate, and everybody knows it is not feasible.

The CHAIRMAN: But Senator, there is a big difference between the two cases you are talking about. One is tax law and civil liabilities, the other is criminal law and criminal liabilities.

Senator THORVALDSON: I was referring to the principle—there are differences, of course.

Senator LAMBERT: Is not the connotation or the definition of “merger” really financial?

Senator HUGESSEN: Before Senator Lambert puts his question, may I be allowed to finish the other point?

I was about to ask a question, Mr. MacDonald, and I think you have answered it: you are at all times ready to receive people and discuss their problems in relation to the act before they take any definite action?

Mr. MACDONALD: Yes, Senator Hugessen. We don't thrust advice upon them, but if they wish to come we are ready to receive them.

Senator LEONARD: When Mr. MacDonald started to answer my question with respect to the United States and the United Kingdom, I think he offered a qualification with respect to the situation in the United States or the United Kingdom. Did I get that clearly, Mr. MacDonald?

Mr. MACDONALD: Yes. I spelled out the qualification in the further discussion, as far as the United States was concerned; and as far as the United Kingdom is concerned, I should say that their legislative system as respect mergers is entirely different from ours. So, my inclusion of the U.K. was perhaps not very apt.

Senator LEONARD: Thank you.

Senator GOUIN: As to the word “combines”, I see no definition of it in the amendments.

Senator LAMBERT: It is in Part II.

Senator GOUIN: The name appears only in the title. It is not a very important question but it does seem strange. I do not know whether I understood Mr. MacDonald correctly, that the word “combination” includes both merger and monopoly.

Mr. MACDONALD: No, Senator Gouin. My suggestion was that in order to keep the discussion clear we should speak about a monopoly or a merger or a combination. As to the word “combine”, my impression is that aside from the title and possibly some incidental place in the act, it has disappeared. Its place in the previous act was as a compendium because it included a combination, and a merger, and a monopoly. As a result of the combination definition of the act and section 411 of the Criminal Code being consolidated in the act, the three were split up. So, you no longer have the need for the all-inclusive expression “combines”.



Senator POWER: It is no longer the Combines Investigation Act, because you have no combines to investigate—you have mergers and monopolies.

The CHAIRMAN: A rose by any other name—

Senator LAMBERT: It is not that. There is no such thing as a perfect monopoly for one purpose. The point I was endeavouring to make a moment ago is that a merger connotes financial consolidation of capitalization.

The CHAIRMAN: That is its origin.

Senator LAMBERT: That is the idea, at any rate. A combine may occur among a group of institutions which are engaged in the same industry, without having any common financial control; it is that association which has been the subject of inquiry on the part of the Combines Investigation Branch, more than anything else.

Mr. MACDONALD: More than anything else, yes, but not entirely.

Senator LAMBERT: I do not think this legislation focuses on that problem at all. It may refer to it. But it is now made so general in the definition of merger, monopoly and so on, that we lose sight of the idea of the institutions that are engaged in the same kind of industry coming together by agreement and association—I could name some of them—I know how they have operated in the past, and you have not always been successful in reaching the milk in the cocoanut.

Senator BRUNT: He has tried mighty hard.

Senator LAMBERT: That is the situation, and the condition that brings about restraint of trade and reacts adversely on the consumer interest in this country. It seems to me this is taking the focus away from the real spot, rather than concentrating on it.

Senator HUGESSEN: I do not agree with Senator Lambert. The question, it seems to me, is whether it is necessary for us to have a definition of “combine” as well as a definition of “merger” and “monopoly”. I do not think it is necessary. If you turn to Part V on page 6, you will note that the really operative section of the bill is section 32(1) which is taken from the Criminal Code. It commences:

“32(1). Everyone who conspires, combines, agrees or arranges . . .” There is no issue as to what “combine” means, but the expressions “monopoly” and “merger” are technical terms and have to be defined. And for the same reason I do not see why we have to change the title of the bill, combines investigation.

Senator CROLL: A very popular name.

The CHAIRMAN: It is rather curious that a merger is an acquisition and a monopoly is a situation. That is what the definition says.

Senator LAMBERT: What is a combine?

The CHAIRMAN: A combine is the getting together.

Senator LAMBERT: Regardless of a merger?

The CHAIRMAN: It is a togetherness of a certain kind.

Senator LAMBERT: In other words the striking out of different parts, as the witness suggests, tends to lend a little confusion to the interpretation of these different terms.

The CHAIRMAN: Except that in the present act there was separately a definition of combines and separately a definition of a merger or monopoly.

Senator LAMBERT: There is certainly a diffusion of the whole idea due to the substitution of the present proposed paragraph 1 which already exists in the law.

The CHAIRMAN: Are there any other questions or discussion in relation to these two words?

Senator GOUIN: In the Criminal Code, in section 409, it mentions a conspiracy in restraint of trade. I would be inclined to believe that a combination would be a kind of conspiracy in restraint of trade because in the marginal note in this bill to your new section 31, which is section 411 of the Criminal Code, is called in the side note "conspiracy". But I still suggest it would have been a good thing somewhere to have the word combination in reference to something. We have the word combine.

The CHAIRMAN: Of course I am just expressing a view of my own: The word combine has a pretty clear definition, a dictionary meaning, and the offence is not in the word combine itself, the offence arises from the ends that combining may lead to or does lead to. Is that right, Mr. MacDonald?

Mr. MACDONALD: Yes, Mr. Chairman, I think it is a question largely of drafting. If you go through the Criminal Code and other statutes, in many of them you will find that certain provisions involve definitions and certain other provisions do not need a definition. Now as a convenience in drafting, in dealing with merger and monopoly, the draftsman considered it more convenient to set up a definition and say that anyone who is a party to that thing as defined is guilty of an offence; and that course led to greater clarity than if he had avoided a definition. Now, in the combination section the draftsman came to the conclusion he did not have to set up a definition. It would seem to me that the question of a definition or no definition is really a matter of draftsmanship.

The CHAIRMAN: What they have done here is to define a merger and to define a merger and to define a monopoly, and then when they create the offence they just say it will be found in section 32 where I read, "every person who is a party or privy to or knowingly assists in, or in the formation of, a merger or monopoly is guilty of an indictable offence and is liable to imprisonment for two years." Now, you could have done a right about face on this and you could have put the parts of the definition into the section that creates the offence just as well, and that is more the form in which they have done it when they come to the word combine. They put it right into offence, but here they have given a definition which includes what may be a violation and then they say if you are a party to that you are guilty of an offence.

Senator GOUIN: Mr. MacDonald, I see we have eliminated the word "trust" also. I do not insist on retaining it but I would be glad to have a word of explanation as to why it is left out.

Mr. MACDONALD: The word "trust", Senator Gouin, really never came to bear upon anything in that definition. If you look at it closely it refers to a merger, trust or monopoly, an expression used as a term of art, so to speak, and then it broke them down into two, under one of which was a merger and the other of which was a monopoly, and left the trust up in the air.

Senator GOUIN: Thank you very much.

The CHAIRMAN: Shall we carry the definition section?

Hon. SENATORS: Agreed.

The CHAIRMAN: Therefore we have carried section 1. It is almost one o'clock. Is this a convenient time to adjourn?

Senator ASELTINE: We might adjourn until the Senate rises this afternoon.

The committee adjourned to the call of the chair.

—Upon resuming at 3.40 p.m.

The CHAIRMAN: Call the meeting to order. Gentlemen, before we resume the hearing, I want to report to you first that following the suggestion made by Senator Croll this morning I went over the list of witnesses who were heard in the Commons Banking and Commerce Committee, and we have been in

touch with some of them. For instance, the Canadian Chamber of Commerce: we have been in touch with them, and they advised that they were prepared to stand on the statement they made to the Commons Banking Committee. We have been in touch with Mr. Gilbert, the Director of the Retail Merchants Association of Canada, and he said he would call back in 15 or 20 minutes to advise as to whether he would stand on the statement in the Commons Banking and Commerce Committee or he would appear. We have been in touch with Mr. Hannam's office, of the Canadian Federation of Agriculture, and he is not available until some time later this afternoon. We have been in touch with the Canadian Manufacturers Association, and there is only one representative in Ottawa, so he is referring it to Toronto to see whether they will have anything further that they wish to add. Then there were a number of other organizations that appeared in the Commons. I had a look at the nature of their representations, and did not feel they would be of any value to our consideration of the bill. For instance, the Fisheries Council of Canada. The fisheries have an exemption as to B.C. under the act. The Co-operative Union of Canada: the co-operative organizations have an exemption under the act. So we did not get in touch with them. There were a number of organizations represented by counsel. We have been in touch with counsel and they are not in a position to advise us that they are going to do more than sit and observe. It was indicated that if they wished to make any representations, that should be done today or tomorrow morning. That is where we stand. I thought I should make it a matter of record at this time.

Now, when we adjourned we had considered section 1 of the bill, and passed that section.

We come now to section 2 of the bill. Mr. MacDonald, what have you to say about section 2?

Mr. MACDONALD: The change in section 7 which is effected by clause 2 of the bill, does several things. First, it corrects the references consequent upon the amendments. You will notice that the old section 7 on the opposite page referred to sections 32 and 34 of this act, or sections 411 or 412 of the Criminal Code. Since all the offence-creating sections are now moved into Part V of the Combines Investigation Act those references are replaced by a reference to Part V. Secondly, there occurred throughout various sections of the present act a variety of expressions like "is about to", "has been", "is being", et cetera. These were all made uniform by converting them into "has been or is about to be", upon the view that those two expressions caught all the cases.

Finally, paragraph (c) of subsection 2 of section 7 has been added as a clarification, and in replacement of some other words now in the section, as to what any six persons who apply formally for an inquiry must set out as far as evidence is concerned.

The CHAIRMAN: I was just noticing, Mr. MacDonald, the difference in the wording. The wording in section 2 of the bill is "has been or is about to be committed"; and I see in the present statute it is "has been or is being committed". Do you regard that as being any significant change in the language?

Mr. MACDONALD: No, Mr. Chairman. The intention was that those two expressions would catch anything that had been caught by the previous variety of expressions that occurred throughout the act.

The CHAIRMAN: Because if it is going on in relation to some part, it "has been".

Mr. MACDONALD: And if it is not going on and is being commenced, say, then it must be "about to be".

The CHAIRMAN: What percentage of the public would have to be established by any such application as being detrimentally affected before you would move under this section?



Mr. MACDONALD: Well, Mr. Chairman, we would have to go back to the definition and the charging section, and be satisfied upon the evidence put up to us by the six citizens in the formal application that there was reasonable cause to commence an inquiry. There would have to be a representation of facts, reasonable cause for believing them to exist, which established a prima facie case. I might add that an inquiry is seldom commenced upon the formal application of six citizens because only, I think, three times in the last seven or eight years have we received a formal application.

Senator CROLL: Is there any difference between a solemn declaration and a statutory declaration?

The CHAIRMAN: It looks as if it might be just an inheritance.

Mr. MACDONALD: It is an inheritance, Senator Croll, and at the moment my guess would be that there is no difference, that the terms are interchangeable.

Senator CROLL: Now, you talk about inquiry by six citizens. Without giving their names, and by drawing on your memory, I would like an example of one of those that appeared before you, and roughly what kind of application would be made, because I think it would be of interest.

Mr. MACDONALD: Yes. Well, without drawing on any particular facts, an application under this section would set out the names of the individuals who were engaging in a particular practice, and it would describe the practice. If it was a combination it would describe the things upon which they had agreed, and it would show that the persons referred to had accounted for a sufficient proportion of the market concerned to make their limitation of competition undue within the meaning of the act. Perhaps that could be summed up by saying that it would show alleged facts that showed a prima facie case. Secondly, it would show reasonable grounds, on the part of, the persons making the application, for believing that those facts existed.

The CHAIRMAN: May I interrupt there? Would it indicate say percentage-wise the extent of the market that was affected by this operation that was charged to be in violation of the act?

Mr. MACDONALD: It would have to give, Mr. Chairman, some sufficient indication of that to lead us to believe that there was a contravention.

The CHAIRMAN: What would be a sufficient one that would start you motivating?

Mr. MACDONALD: Well, in the cases that have come before the courts so far under the combination section, the proportion of the market accounted for by the companies involved—I am talking about combination cases—has ordinarily been quite high. I would say that ordinarily it ranges from 75 per cent to 100 per cent, and more frequently in the upper ranges of that area. One or two cases have dropped a little bit below that bottom limit. On the other hand, no case has come before the court involving a lesser proportion than that, where the court has said there is no offence because sufficient proportion of the market is not accounted for. What I am saying is that in the cases to which we must look for experience so far, those have been the proportions accounted for.

The CHAIRMAN: I notice in section 2, in addition to giving the nature of the offence, you have the names of persons believed to be concerned. Is there any number or percentage in relation to the total, that you must have? How do you determine that you have enough names to move under the provisions of the act?

Mr. MACDONALD: The information in the application would have to satisfy us that there were reasonable grounds for believing that the people referred to did have a very substantial part of the market. I could not say offhand

that we would be only satisfied with 90 per cent, or that we would stop at 75, 60 or even 55 per cent. That would depend on the circumstances of the case. The courts have never defined the nether limit of the proportion of control required.

The CHAIRMAN: And you look on the question of control not only on a national basis, but also on an area basis, do you not?

Mr. MACDONALD: That is correct, Mr. Chairman. You must first define your market. If you are dealing with a local situation, you look at the persons responsible for that local situation. If it is a national market, that is another thing altogether.

Senator LAMBERT: These charges as described are made directly to your board, first?

The CHAIRMAN: I believe to the Director.

Mr. MACDONALD: Yes, they would be made to the Director in the first place.

Senator LAMBERT: At the same time, I presume that before action is taken by the board the Governor in Council must present an order?

Mr. MACDONALD: No.

Senator LAMBERT: It is not referred to the Government?

Mr. MACDONALD: No.

Senator LAMBERT: It all rests in the hands of the board?

The CHAIRMAN: The Director.

Mr. MACDONALD: There are three methods, if I may say, by which an inquiry may be commenced: (1) by the formal application under this section of six citizens; (2) by direction of the Minister; and, (3) on the initiative of the Director when he has reason to believe that an offence has been or is being or is about to be committed.

Senator LAMBERT: Before such action is taken, after the receipt of the complainants' evidence, is any step taken to acquire any information about the defendant?

Mr. MACDONALD: There are three compulsory ways of obtaining information or evidence under the act, which can only be exercised with the concurrence of the Restrictive Trade Practices Commission. There are of course some cases in which we can gather a great deal of evidence on the street, so to speak. But if the Director has to employ one of the compulsory powers in the act which, briefly, are calling witnesses, going onto premises and looking at files, and requiring written returns: before he exercises any one of these powers, he must go to the commission in somewhat the same way as a crown attorney would go to the court, and get permission to exercise that power.

Senator LAMBERT: Before that step is taken, does the defendant have any opportunity to provide any evidence in justification, or is the procedure to invade his offices at once and secure the information that you suspect is there? Has the defendant any chance to defend himself beforehand?

Mr. MACDONALD: He has no formal opportunity of defending himself unless and until a statement of evidence is preferred containing allegations against him.

Senator LAMBERT: In other words, he is more or less regarded as being guilty before he is proven guilty.

Mr. MACDONALD: Not at all. At this particular stage no decision has been reached that any allegation will be made against him, which he will have to answer.

The course of the inquiry, whether it be commenced in any one, or another, of the three ways I have mentioned, would be roughly this. If we

were persuaded that an offence was likely taking place we would first gather all the evidence that we could from sources immediately available to us and requiring no compulsory power. If that evidence supported our view, then we would probably go to the commission and ask for authority to visit the premises of the parties concerned and look at their documents and, at the option of the parties, we would copy any relevant documents on the premises or bring them back to Ottawa, copy them, and return them. If that, in turn, supported the view that a contravention was taking place, the next step would probably be to return to the commission and ask the commission to summon witnesses before a member of the commission to supplement the material contained in the documents.

The CHAIRMAN: Or to explain.

Mr. MACDONALD: Or to explain.

In turn, if that evidence supported the view that there was a contravention, the next step would probably be to go back to the commission again, and ask for their authority to require any person who was believed to have relevant evidence, that had not yet been put on the record and was necessary to supplement or explain the previous evidence, to make written returns under oath or affirmation.

The Director would thus end up with a very considerable volume of evidence in front of him. At that stage he would have to consider finally, in the terms of section 18, whether it warranted presenting what is called a statement of evidence to the commission and to the parties against whom allegations were made in the statement of evidence. Now, only at that stage is there a formal allegation against any person.

If that is done, if the commission receives such a statement, the commission sets a time and place, and notifies the parties to whom the statement has been sent of that time and place. At that stage the Director becomes a party before the commission, like the other parties, and he comes into court, as it were, and argues in support of the statement of evidence which he has presented; the other parties argue against it, or they call evidence, or they recall witnesses, or they make representations in such a manner as they wish.

Having heard that final argument, the commission then writes a report and presents it to the Minister.

Senator LAMBERT: These all bear, I suppose, on problems of restraint of trade?

Mr. MACDONALD: Yes sir; these would all be classes of contravention mentioned in the act.

Senator LAMBERT: That is, competitive institutions, engaged in supplying provisions of some sort . . .

Mr. MACDONALD: In the broad sense, yes.

Senator LAMBERT: They would take exception to some practice which a competitor was using in competition with them, and they are able to make representations under it, by six persons resident in Canada. Then, on the basis of that presentation they proceed to examine into the charges against the prospective defendant in the case.

The point I am making is this: Have you had many of those presentations come to you?

The CHAIRMAN: You mean from six persons?

Senator LAMBERT: Yes.

The CHAIRMAN: I think the witness has said in his recollection he has had three.



Senator LAMBERT: What I was going to say is, have you had many experiences where you have cancelled the application because you did not think that the charges were adequate?

Mr. MACDONALD: A considerable number of inquiries have been discontinued each year before reaching the stage of presenting a statement of evidence to the commission, that is to say, putting the parties to the onus of replying before the commission.

Senator LAMBERT: Before prosecution?

Mr. MACDONALD: Not before prosecution.

The CHAIRMAN: Much earlier.

Senator THORVALDSON: Mr. Chairman, it does seem to me that this is a very unimportant section of the act, namely, very few proceedings are commenced as a result of these allegations by six people.

The CHAIRMAN: That is right, but there have been a great many as I understood from Mr. MacDonald, which were started but which were discontinued.

Mr. MACDONALD: Not under this section.

Senator THORVALDSON: There were only three under the section, and the amendment to the section is very very slight, it does not contain any principle at all and I wonder if we could not go on.

Senator POWER: Mr. Chairman, may I ask before we go on why we added, or did we add (c) to section 2, which reads "The application shall be accompanied by a statement in the form of a solemn or statutory declaration showing (c) a concise statement of the evidence supporting their opinion that the offence has been or is about to be committed." It did not appear to be in the original section.

Senator HUGESSEN: Yes, it was. At the end of subsection (1) of section 7 we have these words: "...and shall place before the director the evidence on which such opinion is based." These words have been taken out from the end of subsection (1) and subsection (2) (c) has been substituted.

The CHAIRMAN: Shall section 2 carry.

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 3 is only a consequential amendment for the purpose of changing the designations of sections 32, 33 and 411 and 412 of the Criminal Code, and referring to where these sections are now brought into the Combines Investigation Act in Part V.

Shall section 3 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 4, Mr. MacDonald.

Mr. MACDONALD: Here again, Mr. Chairman, it is a question of changes in the cross-references only.

Senator HUGESSEN: Yes, the old section 11 talked about sections 411 and 412 of the Criminal Code?

Mr. MACDONALD: Yes. If you will look across the page you will see the italicized words have been taken out because the word "Act" now covers everything.

Senator HUGESSEN: Is that the only change?

Mr. MACDONALD: Yes.

The CHAIRMAN: Shall section 4 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Now, section 5. This is interesting for the lawyers, Mr. MacDonald, so you might explain this a little bit.

Mr. MACDONALD: Well, in the course of a general inquiry under section 42 of the act some time ago, the Restrictive Trade Practices Commission itself, which may take more initiative in that kind of inquiry, thought that it would be assisted if counsel were appointed by the minister. There was a section in the act which said that the director might go to the minister and apply to him to instruct counsel, but there was no similar provision authorizing the commission to do so, and in that instance the commission went through the director. It took the view, and I think quite properly, that it should not be under this disability but that it should have access direct, and the section was amended accordingly.

—The CHAIRMAN: Shall section 5 carry?

Carried.

Section 6, Mr. MacDonald.

Mr. MACDONALD: Under clause 6, the only change is in the cross-references and to bring about uniformity in the use of expressions like "has been" and "is about to be".

The CHAIRMAN: Yes, in the present section, sections 411 and 412 of the Criminal Code are being specifically referred to.

Shall section 6 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 7.

Mr. MACDONALD: There again the only change is in the cross-references.

The CHAIRMAN: Shall section 7 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall section 8 carry?

Mr. MACDONALD: The same applies to this section.

The CHAIRMAN: Shall section 8 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 9.

Mr. MACDONALD: Section 19 of the act is amended. Section 19 contains the terms of reference of the Restrictive Trade Practices Commission when it finds a statement before it for adjudication, and the amendment—if we could turn page 7—the amendment is consequent upon the change on page 7. It directs the commission, in addition to its ordinary terms of reference, to make a finding whether or not the arrangement relates only to one or more of the matters enumerated in what will be subsection (2) of section 32, and if it does find that an arrangement relates only to one or more of those matters the amendment imposes on them the further dealing of indicating whether it also brought about any of the effects enumerated in subsection (3) of section 32.

Senator HUGESSEN: Mr. Chairman, I suggest that we might stand this section. There is some dispute as to whether we might pass subsections (2) and (3).

The CHAIRMAN: Section 9 stands.

Senator GOUIN: Mr. Chairman, it seems to me that the second paragraph of section 15 will have to be modified also. The second section of paragraph 15 refers to sections 411 and 412 of the Criminal Code which are incorporated into the present bill. It is just a question of adjustment.

Mr. MACDONALD: There was a reason for that, Senator Gouin. For some time after these amendments take effect and sections 411 and 412 cease to exist they will nevertheless continue to exist for offences committed before

the amendments came into effect. In time however the references to sections 411 and 412 will become superfluous and only the expression "act" will have any significance.

Senator HUGESSEN: They may still be conducting prosecutions under the section.

The CHAIRMAN: It is just a transition, I suppose. Section 9 of the bill stands. May I just interject that we have now heard from Mr. Gilbert of the Retail Merchants Association that his association is prepared to stand on the presentations which it made to the Standing Committee on Banking and Commerce of the other house.

We will now deal with section 10 of the bill.

Mr. MACDONALD: The change here is in the cross-references again.

The CHAIRMAN: Only?

Mr. MACDONALD: Yes, only.

The CHAIRMAN: Are there any questions? Are you prepared to pass section 10?

Hon. SENATORS: Carried.

The CHAIRMAN: Next is section 11 dealing with the reduction or removal of customs duties.

Mr. MACDONALD: Section 29 is changed in respect of the underlined words. If you look across the page at the italicized words you will observe that they refer to a situation where the Governor in Council is satisfied that "there exists" a combine. That gave rise to the practical difficulty that it was always some time after the adjudication that the matter would get before the Governor in Council, and it was a practical impossibility for the Governor in Council to be satisfied that there presently exists a combine, as a result of an adjudication that had taken place some time ago. The advice received from the Department of Justice was that the expression "there exists" would have to be read, to give the section effect, in the sense of "there existed at the time of the adjudication." The purpose of that part of the amendment is to bring the wording of the section into line with the advice as to how it would be interpreted in any case.

The CHAIRMAN: I should point this out, Mr. MacDonald. You will notice in this section 11, which gives you a new section 29, it says, "Whenever, from or as a result of an inquiry under the provisions of this act, . . . "and then all that follows is the result of an adjudication. That means where there has been a conviction, and I am just wondering whether the stage of inquiry means at the stage when your work of investigation is done and when your statement of evidence is presented. I take that to be the result of the inquiry, and I am wondering whether that stage isn't too early to have these drastic things happen because at that stage the people involved have not had the opportunity to present their side of the case such as they might do before the Restrictive Trade Practices Commission.

Mr. MACDONALD: You have raised a point that I confess had not occurred to me, for we had always read these words "as a result of an inquiry" as meaning a finished inquiry that had resulted in a report by the Restrictive Trade Practices Commission after an opportunity to all the parties to be heard.

The CHAIRMAN: I am not sure that that is the inquiry. I think the inquiry ends when you present your statement of evidence and allegations to the Restrictive Trade Practices Commission, and then they have to make an adjudication and report.



Senator THORVALDSON: This wording here is exactly the same as in the previous section, is it not?

Mr. MACDONALD: Yes, that is correct.

The CHAIRMAN: But now it is before us as a re-enactment.

Senator POWER: It is a matter of policy. If at any time the Government finds that a high or a low policy, whatever it may be, is recommended to the public, surely under our Constitution—

The CHAIRMAN: This does not hamstring the Government in making tariff changes at all but I say it should not be represented in this instance that the change is made because of what an inquiry discloses at that stage of an inquiry when only the investigation has been done by the Crown and the people involved have not had an opportunity to present their case.

Senator POWER: Except that they have more reliable evidence than they would have from, say, a speech made in the House of Commons.

The CHAIRMAN: Don't ask me to comment, I am just dealing with a factual situation.

Senator POWER: I do not see any injustice that is going to be done to people who are going to be affected by a change in the tariff. It becomes a matter of public notoriety.

The CHAIRMAN: There is no public involved at that stage.

Senator POWER: The Government has some factual knowledge prepared by its officers that such practices are detrimental.

The CHAIRMAN: Well, it should not have.

Senator POWER: Well, it has just as much as it would have from a delegation of retailers, as in the normal course of tariff making. The point I am trying to make is that an injustice may be done to someone because the Government makes a tariff change as a result of some investigation, but normally tariff changes are made as a result of representations from every Tom, Dick and Harry in the country and the Government thinks it is good policy to do such and so, and there you are. But here you have something factual that has been substantiated by an inquiry.

The CHAIRMAN: There is only *ex parte* representation.

Senator POWER: Even so; ninety per cent of tariff changes are made as a result of *ex parte* representation.

The CHAIRMAN: I thought my friend had broadened his viewpoint since he came to the Senate.

Senator POWER: No.

Senator LEONARD: May I ask Mr. MacDonald whether in his experience this section has been put into effect to the point of the Governor in Council directing that an article be omitted from a duty or that the duty be reduced? In your experience has that section been used in actual practice to the ultimate end mentioned here of an actual reduction of duty on an article?

Mr. MACDONALD: No, sir.

Senator POWER: This has never been used as a punishment?

Mr. MACDONALD: That is correct.

Senator LEONARD: It may have been used *in terrorem*.

Senator KINLEY: This section has never been invoked? You have never used this section?

Senator MACDONALD: So far as I know, and I am quite sure about this, no tariff has ever been modified under section 29.

Senator LEONARD: But there have been reports of the Restrictive Trade Practices Commission in which they may insert a clause in their report that this section—

The CHAIRMAN: That consideration be given to the section?

Senator LEONARD: Yes.

Senator HUGESSEN: Was there not a report in the newspaper just a few days ago that one of these combines had been asked to state its reasons why the duty should not be reduced in view of an offence for which they had been convicted?

Mr. MACDONALD: There was a newspaper report about which the minister was asked in the House of Commons and he replied at that time he would have to consider any action taken under section 29 in the same light as an inquiry and refrain from discussing it in view of the provision in the act that inquiries have to be conducted in private.

Senator LAMBERT: Is there any possibility of its being related to the operations of cartels in international price fixing?

The CHAIRMAN: To the extent that cartels relate only to export trade, the tariff would not be very useful, would it?

Senator LAMBERT: The import trade, too.

Mr. MACDONALD: Well, first of all, there would have to be an inquiry under the act or a judgment, and if that inquiry or judgment did satisfy the Governor in Council that there existed a conspiracy and that it had these effects, then it could be used.

Senator LAMBERT: This, anyway, could be used to cover that?

Mr. MACDONALD: Yes.

The CHAIRMAN: Any more on section 11? Shall section 11 carry?

—Section 11 carried.

The CHAIRMAN: Section 12 deals with the injunction procedures, does it not?

Mr. MACDONALD: Yes. At the present time section 31 which goes back in its history to the 1952 amendments, permits the court to make a restraining order or a dissolution order following a prosecution, or in the case of an incipient offence, but it does not appear to authorize the court to make such an order in the case of a consummated offence except following a prosecution leading to a conviction and sentence. Now, this amendment would permit the court on an application of the attorney general in the case of a consummated offence to make such an order without a prosecution proceeding leading to a conviction and sentence.

Senator WALL: Why would that be possible now under the law?

The CHAIRMAN: You mean why should it?

Senator WALL: Why should it be, yes? It was a question I raised in the house, and I cannot reconcile myself to it.

Mr. MACDONALD: Well, that I think is a question of policy. I have been explaining the mechanics of the section. If the minister appears before you he will probably speak to that.

Senator THORVALDSON: Have there been cases in the past where that would have been a useful remedy, namely, this new remedy which is contained in the section? Do you recall any?

Mr. MACDONALD: I think that leads back into the policy basis of the change, Senator Thorvaldson.

Senator KINLEY: Have we any other law whereby you can break a monopoly or a corporation if, for instance, it becomes too big, such as exists in the United States?

Mr. MACDONALD: No, Senator Kinley, we do not. You are referring now to the Sherman Act?

Senator KINLEY: Yes.

Mr. MACDONALD: And to the other branches of the anti-trust legislation of the United States where they have a civil as well as a criminal remedy, and where a merger or combination could be proceeded against in a number of different ways, some of them criminal, some of them civil. Up until the present time we have had nothing corresponding to the civil remedy in the U.S. legislation for completed offences. This to a certain extent approaches it.

Senator KINLEY: It is the only weapon you have, it is the only way you can do this?

Mr. MACDONALD: Besides a prosecution, yes.

Senator WALL: Could we stand this section?

The CHAIRMAN: Yes, I was going to suggest that for another reason. In subsection (2a) at the foot of page 5, in dealing with appeals, there is a reference to an appeal from the Exchequer Court, and that brings in a question that appears later in the bill where jurisdiction is conferred on the Exchequer Court; and I wanted to ask a few questions when the minister is here as to why the jurisdiction is being extended to the Exchequer Court, and I take it that Mr. MacDonald would prefer that I ask the minister rather than himself on that question; is that correct?

Mr. MACDONALD: I think there are a number of these questions, Mr. Chairman, where the minister would be the appropriate person to reply.

The CHAIRMAN: I was wondering if I could ask you this question: In this business of getting an injunction or enjoining some people who have been operating in a combination against the act, if you had a set of circumstances such as these, if you had complete evidence as to the existence of a combination, say among an association of producers, and affecting such a percentage of the trade in that market that it became obviously and clearly an offence under the act, but if there was evidence that the operation had been reasonably well conducted and that so far as pricing was concerned the prices were actually lower, I could conceive in those circumstances that while there would be evidence that an offence or violation of the statute had occurred, the minister might feel that the ends of justice would be served by enjoining the continuance of that combination without an actual prosecution. Is that one sort of case that might be covered? If it is embarrassing, don't answer it.

Mr. MACDONALD: No, I think that I can deal in part at least with that. You are leading of course into the very thorny ground or issue of how you prove prices are reasonable or unreasonable in a court. Now, the minister, I think on at least one occasion, has expressly excepted that situation from the situations to which he would intend to apply this section. He has explained, as I remember, that the use of this section would be for merger cases that turned upon a fairly fine question of judgment in a field where the law had not become completely defined, or those combination cases which related to the practices set out in section 32, subsection 2, which were not per se offences, and he did not envisage it as the method of proceeding against price fixing combinations, which would be dealt with in the ordinary way, and he did not except price fixing combinations in respect of which it might be argued that the prices fixed were reasonable.

The CHAIRMAN: If we just review that for a moment, Mr. MacDonald: Section 32 provides for doing certain things, like exchange of information and establishing standards. Those are defined as being combinations that do not establish an offence in themselves unless the evidence goes further. If you



have the existence of those facts, plus some agreement in relation to price, then that offence is not available and becomes one of the regular combination cases under the statute; is that correct?

Mr. MACDONALD: I think that is correct.

The CHAIRMAN: Then you are not concerned about injunction processes where the things that are done in combination are things that are not an offence?

So you do not intend to discuss it in relation to that at all. The only possible intention is subsection (2) on page 5, where it refers to a combination, and to deal with the kind of combination that is an offence under the act.

What you are telling me now, presumably relating what the Minister has to say, is that even though it is incorporated in this bill, it is not the intention of the Minister to permit it to be applied in any such case. Is that what I understood you to say?

Mr. MACDONALD: My recollection of the Minister's statement, Mr. Chairman, is that he explained that the provision enabling an injunction to be sought in the case of a consummated offence, was intended for use, not in relation to price-fixing cases, or other cases coming under section 32(1), but as being useful in certain other cases, either on the merger side of the house, where it might appear that the parties in entering into the merger had fallen into an error of judgment rather than contravened a well-defined prohibitory rule, or where the combination related only to one of the matters specified in subsection (2) of section 32, but had inadvertently, if you like, spilled over into subsection (3), again without intent to contravene any well-defined *per se* prohibition.

I think I should leave it there, Mr. Chairman. If you want to pursue the matter further, perhaps you should ask the minister because, although I think I have repeated correctly what he has had to say about it, if there is any question he should speak for himself.

The CHAIRMAN: The only thing that bothers me is that when you have it spilling over into subsection (3) of section 32, you have an offence under the statute. I do not know how it could be said to inadvertently slop over, and I wonder whether the inadvertent slopping over could constitute an offence. I did not read the section dealing with a combination as creating an absolute offence; I thought there had to be an element of intention or knowledge there.

Senator CROLL: The witness is leaving it for the Minister.

The CHAIRMAN: Yes. I was just stating my own view.

Section 13: I think the only change there is with respect to the cross-references.

Mr. MACDONALD: Section 33 becomes section 31A, and the only change is in the cross-references.

The CHAIRMAN: Would it be agreeable to carry that part of section 13, which is entitled 31A(1) and (2), down to the words "Part V".

Some Hon. SENATORS: Carried.

The CHAIRMAN: Now, with respect to Part V: Could we first have the explanation of Mr. MacDonald dealing particularly now with section 32.

Mr. MACDONALD: Section 32(1) is the provision into which has been incorporated the old section 411 of the Criminal Code, modified slightly so as to incorporate those one or two small factors that were considered to have been in the Combines Investigation Act relating to combinations, and not to be covered by section 411.

In other words section 32, subsection (1) is substantially section 411 of the Criminal Code. It has been modified in one or two small particulars to get in things that were not in section 411 but were in sections 2 and 32 of the Combines Investigation Act which, in regard to combinations, are being dropped.

Senator KINLEY: Let me ask Mr. Chairman: There must be a conspiracy here in order to have an offence? You can do this yourself if you do not associate with somebody else?

The CHAIRMAN: Of course, agreeing with yourself is to fix a price is the ordinary way of doing business.

Senator KINLEY: It says in the bill "combines or arranges with another person."

The CHAIRMAN: Yes, with another person—that is the whole essence of the offence.

Senator KINLEY: Yes, but what must the association be to make it an offence.

The CHAIRMAN: It has been made to appear in the course of investigation from time to time that there are groups of people in one industry who have gotten together and made arrangements with respect to any opportunities for their product.

Senator KINLEY: Are you referring now to a corporation or an individual?

The CHAIRMAN: It could be a corporation or an individual.

Senator KINLEY: For instance now if in this country a man was a broker and had an agency or a monopoly on selling a certain type of goods imported from a foreign country, and this was his only source of supply, and he overcharged you, what about that?

The CHAIRMAN: You don't buy from him again.

Senator KINLEY: Well, if he does these things and overcharges you is he not liable?

The CHAIRMAN: There must be a conspiracy with another person.

Senator KINLEY: That is what I asked at the start. If you are running a business and you restrict your manufacturing you say that I do not commit an offence unless there is a conspiracy.

The CHAIRMAN: As long as you just talk to yourself it is perfectly all right,

Senator KINLEY: As long as you have the tiller you are all right?

The CHAIRMAN: Yes.

Senator KINLEY: What about the word "unduly"? It refers to where you unduly limit the facilities, where you unduly limit manufacturing, where you unduly limit competition. How do you interpret that?

The CHAIRMAN: The courts have interpreted it.

Senator KINLEY: What do they say? Do they say "unreasonable"?

The CHAIRMAN: I think if I might be permitted to summarize the Howard Smith judgment, the court in effect said if the association or combination of persons represents such a portion of the market that they have virtually arrogated to themselves the market without any other effective competition, then, as the court says, that certainly is unduly limiting.

Senator KINLEY: If they have the power to do what they want to do?

The CHAIRMAN: If they run roughshod—is that right, Mr. MacDonald?

Mr. MACDONALD: I think that certainly should come within the grasp of the section.

Senator KINLEY: A man cannot do unduly what he has not the power to do, is that it?

The CHAIRMAN: Are there any other questions? Mr. MacDonald, would you care to go ahead and deal with this section 32?

Mr. MACDONALD: I think I had explained that section 32 (1) was substantially section 411 of the Criminal Code modified to take in one or two factors that upon a comparison of section 411 of the Criminal Code with the com-

bination provisions of the Combines Investigation Act appeared to be in the latter and not in the former.

For example, if you will look at section 32 (1) (c) you will see in the third line of the paragraph the words "storage" and "rental". Now, if you will look back to section 411 of the Criminal Code, which appears further on, it is set out opposite page 11 in my book, you will see that those words do not appear in paragraph (d) which corresponds to this paragraph (c). They were put in here because storage and rental were covered by the provision relating to combinations in the Combines Investigation Act.

Senator HUGESSEN: The insertion of those two words are really the only things in the old section 411 except that you have taken the old subsection (b) out of section 411 and put it into subsection (d).

The CHAIRMAN: In (d) they have now added the word "unduly" have they not?

Mr. MACDONALD: Yes. Unduly has been added to one of the paragraphs.

The CHAIRMAN: In the copy I have it is not in it. Is that a typographical error?

Senator BRUNT: Which subsection are you referring to?

The CHAIRMAN: Subsection (d).

Mr. MACDONALD: That was taken out, Mr. Chairman, I believe in one of the amendments, either in committee or in the house.

The CHAIRMAN: Are you sure of that, because I would have thought that the inclusion of it was highly desirable because otherwise any restraint of trade is an offence. I do not think that was intended. I think you must have the word "unduly" in there.

Mr. MACDONALD: Could I check on that for a moment?

The CHAIRMAN: Yes, would you please.

Senator CROLL: "Unduly" was never in the original section.

Mr. MACDONALD: No, but it was in the bill when it was presented to Parliament for first reading.

The CHAIRMAN: On the basis of the section as it was before, and admitting that restraint or injuring are absolute terms in themselves and therefore relative words such as "unduly" did not need to be inserted, that it would drop from the bill. That is my recollection of my reading of it.

The CHAIRMAN: I think Mr. MacDonald has the explanation now. Would you give it for the record, Mr. MacDonald?

Mr. MACDONALD: The word "unduly" was in the bill as introduced. It was in the bill until it came back to the Committee of the Whole and then it was taken out by an amendment in Committee of the Whole.

Senator CONNOLLY (*Ottawa West*): Why?

The CHAIRMAN: Do you know the reason why?

Mr. MACDONALD: I am now in the position of repeating the record again. It was explained that the reason for putting the word in that paragraph was (a) for uniformity among the four paragraphs, (b) it was considered the paragraph would be read as if the word were there anyway, and (c) the effect of the *Container Materials Case* was to indicate that the paragraph would be read as though the word "unduly" were already there; but since the insertion of the word was not considered to change the effect of the paragraph there was no substantial objection to an amendment taking it out.

The CHAIRMAN: All right. Shall we deal with subsection (2)?

Senator LEONARD: Before we leave subsection (1) I notice that it leaves out the words that were in the old definition of combine. It leaves out the words relating to fixing a common price or a resale price, which is something



one ordinarily would have thought would most likely involve a serious offence against which legislation would be directed. One would have thought that would be an offence and that some provision would be left in there with respect to anyone one conspires to fix a common price, which was in the old definition of combine. I am a little surprised that is not in there now.

Mr. MACDONALD: The reason was that on a comparison of the definition to which you are referring in the Combines Investigation Act with the provisions of section 411 of the Criminal Code, it was considered that the fixing of a common price was covered by section 411, and in recent years the provision under which the price fixing combinations have been charged has been section 411(1)(d).

Senator LEONARD: Where is that now?

Mr. MACDONALD: That has now become (c).

Senator LEONARD: "To present, or lessen, unduly, competition. . ."

Mr. MACDONALD: That is correct, sir, and that is the paragraph under which a great deal of the jurisprudence has grown up.

Senator CROLL: What has happened to subsection 3 of section 411?

Mr. MACDONALD: There was a parallel provision in the Combines Investigation Act which has just been allowed to stand, so it automatically applies.

The CHAIRMAN: It is section 4 of the present Combines Investigation Act which says, "Nothing in this act shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees". So it was not necessary to carry it through.

Senator LEONARD: In your experience, Mr. MacDonald, do you think that a combination to fix a common price is bound to come within section 32(1)(c)? Can there be, from your experience, a combination designed to fix a common price that would not prevent or lessen unduly, competition?

Mr. MACDONALD: I can only reply to that by saying that in recent years—I think since 1940 with only one exception if my memory serves me—each price fixing combination—where price fixing was the gist of the offence—was prosecuted, and prosecuted successfully under what was section 411(1)(d).

Senator LEONARD: Which is now section 32(1)(c)?

The CHAIRMAN: Yes.

Mr. MACDONALD: That is correct.

Senator WALL: I wonder if I may ask a layman's question. It says, "is guilty of an indictable offence and is liable to imprisonment for two years." Has anybody ever been imprisoned?

The CHAIRMAN: You cannot imprison a corporation, and it has been mostly corporations that have been charged.

Senator BRUNT: I think there was one individual charged in the *Fine Papers Case*, was there not?

Mr. MACDONALD: Yes, a trade association secretary was charged in that case.

Senator BRUNT: That is right.

Senator CROLL: Was he found guilty?

Mr. MACDONALD: Yes, I think he was fined \$4,000. You go to the Criminal Code here.

Senator CROLL: How did the words "in the price of insurance" ever get in here?

Mr. MACDONALD: I think they have been there for a long, long time. It runs in my mind that when this legislation originated before the turn of the

century, one of the situations that concerned Parliament at that time was insurance, and it was as early as that that insurance was contemplated by the section.

Senator BRUNT: It has just been carried on from year to year.

Senator CROLL: I have always been under the impression that these insurance companies are the best little combines there are in the world. I am surprised to find this in here.

Senator LEONARD: They are now under the jurisdiction of the Superintendent of Insurance.

Senator CROLL: So it is all right.

Senator CONNOLLY (*Ottawa West*): To follow up Senator Wall's layman's question, you say that under the Criminal Code the individual was fined. Now, this is taking the provision out of the Criminal Code and putting it into this act, and as you have remarked yourself, Mr. Chairman, a corporation cannot be imprisoned. How effective is the penalty in subsection (1) of section 32?

Mr. MACDONALD: You draw assistance from the Interpretation Act. It is a combination of section 28 of the Interpretation Act and section 622 and following sections of the Criminal Code.

Senator CONNOLLY (*Ottawa West*): Thank you.

The CHAIRMAN: May we proceed to subsection (2)?

Some Hon. SENATORS: Do we agree with subsection (1)?

The CHAIRMAN: No; we are not passing them individually. I thought we would deal with the whole section first.

Mr. MACDONALD: Subsections (2) and (3) are new.

Senator CROLL: What is the reason for subsection (2)?

Mr. MACDONALD: There again, Mr. Chairman, if I might respectfully make the suggestion, I think this is a matter which the minister should deal with.

Senator CROLL: You tell us what he said in the other place.

Mr. MACDONALD: Where you undertake to repeat, it is quite a task to do it full justice. If it is your intention to hear the minister, I think the fair thing is that he should have an opportunity to speak on it.

The CHAIRMAN: We want to give him an opportunity, but if he does not get here and we are left without explanations by reason of that, I cannot tell what will happen.

Senator POWER: I shall move that this section be stricken from the bill, anyway, whether the minister comes or not.

Senator CROLL: I think, Mr. MacDonald, you should do the best you can, and then if he wants to, the minister can go further. Give us what the minister said in the other place, not your own version.

Senator McDONALD: I would like to know if anyone knows whether it is the intention of the minister to come.

Senator CROLL: Well, I don't want to embarrass Mr. MacDonald, and if there is any objection at all I am prepared to forget about the question; but I thought he might paraphrase what the minister said in the House of Commons. If he does not want to, all right.

The CHAIRMAN: It seems to me there are two ways to deal with it. One way is to ask Mr. MacDonald to rationalize this subsection in its operation. Let us assume it is the law now. How is it intended to operate? As to the reasons that lie behind the setting up of the section, if he prefers the minister should deal with that, that is all right.

Senator CROLL: No; I withdraw my question, Mr. MacDonald. I prefer to have the minister here, because I want to go a little deeper. I reserve my question for the minister.

Senator BRUNT: You will find the answer on page 4347 of Hansard, if you want it.

Senator CROLL: I don't want to read it, I want to hear the minister. I think the honourable gentleman is mistaken, and he has twice alluded to it. I am not the slightest bit concerned what was said in the House of Commons or in the committee of the House of Commons, I am here for the purpose of finding out for myself, and I want somebody to answer the questions.

Senator LEONARD: May I ask a question?

The CHAIRMAN: Subsection 2 stands, then.

Senator LEONARD: Yes, I wanted to ask Mr. MacDonald whether in his administration as director under the present act, and without this amendment, if there had been a violation to do any of the things specified in (a), (b), (c), (d), (e) or (f), would he have considered that they did violate the act as it stood—only one or more of those specified?

Mr. MACDONALD: Perhaps this is an answer to that question: All the combination cases which have been prosecuted in recent years have been price-fixing cases, where what was charged was a conspiracy to fix prices and do other things, but price-fixing being the basis in each case.

Senator CROLL: Then let me follow up by asking you what are some of the other matters not enumerated in subsection 3? We are dealing with (2), I know, but it ties in. I am referring to (g).

The CHAIRMAN: (g) of subsection 2?

Senator CROLL: Yes, subsection 2.

Mr. MACDONALD: What are some of the other matters that would come within (g)?

Senator CROLL: Yes.

Mr. MACDONALD: Well, anything would come within (g) that was not enumerated in (a) to (f), and not enumerated in section 3.

The CHAIRMAN: Would you like the witness to designate some item?

Senator CROLL: (a), (b), (c) and (d) are there in subsection 3.

Mr. MACDONALD: Yes.

Senator CROLL: Now, subsection 2 says that certain things are perfectly all right; but the question asked by Senator Leonard was up to (f). Now, it says here some of the other matters not enumerated in subsection 3. There are four enumerated. What are the others that are not enumerated? What are one or two examples, if you like?

Mr. MACDONALD: I can't think of one at the moment, Senator Croll.

Senator CROLL: Well, you say that (g) is such a catch-all?

The CHAIRMAN: It is supposed to be a helpful catch-all.

Senator CROLL: I realize that. I am not trying to be helpful. In the Combines Act I go on the theory that a combine is *per se* bad, and that is the end of it. Once I go beyond that I am trying to avoid these catch-alls.

The CHAIRMAN: You are just looking for the ones that you regard as good ones?

Senator CROLL: Well, there are not any good combines.

The CHAIRMAN: No, I was referring to catch-alls. There is a question that occurs to me as a result of the question that Senator Leonard asked and the answer which Mr. MacDonald gave. It struck me that Mr. MacDonald's answer was not specifically an answer to Senator Leonard's question, because Senator Leonard I think asked whether the items in subsection 2 were items which would have been violations. Mr. MacDonald answered by say-



ing that all the recent prosecutions in the department had been price-fixing combinations. Am I to conclude from that that the witness is saying that if they are not price-fixing prosecutions then they are innocent combinations?

Senator CROLL: Wait, Mr. Chairman. Let us be fair to the witness. He is not there as a lawyer, and not to give legal opinion, and not to advise us. Senator Leonard's question was a well thought out question, and considerably loaded.

Senator LEONARD: Oh, no.

Senator CROLL: Well, I did not mean unfair.

Mr. MACDONALD: I did not intend to be evasive; I thought I had answered, but if this answers it more clearly: we have not in my experience come across a situation which related only to one of these things and where we felt we could make a case under the present legislation.

Senator LEONARD: That is the point. Under the present legislation you did not consider that any of these kinds of combinations were in violation of the act.

Senator CROLL: I take it the question was, any of them by themselves. That was your question, Senator Leonard, was it not?

Senator LEONARD: In conjunction with themselves. Any one of those items specified in the wording of the section.

Senator THORVALDSON: I think we had a fairly clear-cut question, but it was put by about two or three people over here. I think if Mr. MacDonald would answer it it would be very interesting for the committee. I think Senator Leonard's question was: Did any of these items in (2) by themselves, that is (a) (b), (c), (d), (e) (f) and (g) constitute an offence; and then there was added to that the other question which I think it is more proper to ask: Do any of them or a combination of them constitute an offence or could they be deemed to constitute an offence at the present time under the present act?

Mr. MACDONALD: You are getting away, Senator Thorvaldson, from my experience in the matter. We have been accustomed to examine situations on an *ad hoc* basis, and depending upon the effect we thought they had on preventing or lessening competition, we have gone forward or not gone forward with the cases. We are now talking about combination cases. All the cases we have gone forward with have been cases which clearly related to price-fixing. I have not examined any cases where price-fixing was not involved as such, and come to the conclusion that competition had been prevented to the degree required to bring the cases forward under the act.

Senator HUGESSEN: May I ask this further question which I think arises out of your answer, Mr. MacDonald? Have you ever had a prosecution in the department based solely upon one or a combination of these items (a) to (f)?

Mr. MACDONALD: No. I think that follows from what I said, Senator Huggessen.

Senator POWER: May I ask this question? If my recollection is clear it seems to me that in cases in which prosecution was taken, when price-fixing was charged, the defence was that the conversations which took place did not have to do with price-fixing, but were an exchange of statistics and definitions of trade terms. That was the excuse put up by those who were charged. Am I right in that statement?

Mr. MACDONALD: You are correct that in certain cases where the Crown alleged a combination under 411 (1) (d), and undertook to prove it on the basis of a price-fixing combination, the parties in defence said that although

they met at certain places, and although they appeared to talk in terms of prices, they were actually doing other things. Those other things included exchange of statistics, and one other matter which you mentioned, which rang a bell with me.

Senator POWER: That did occur in prosecutions, and those defences were given perhaps not as a justification for price-fixing but as an excuse for meeting together and discussing conditions of the industry?

Mr. MACDONALD: As an alternative explanation of what was going on.

Senator POWER: But up to the present those defence have not been accepted by any of the tribunals that tried these cases?

The CHAIRMAN: I wouldn't put it that way. I think what happened was, on the evidence the court found that there was an agreement to fix prices.

Senator POWER: I would agree with you there, Mr. Chairman. But at that time we did not have this "out", or this excuse for meeting together, in our legislation—this is something new.

The CHAIRMAN: I think we always had it.

Senator POWER: My point is that this is either a weakening of the Combines Investigation Act, or, as Senator Hugessen said, it is useless; and in either case, it should not be there.

Senator BRUNT: It is a clarification of the present law.

Senator CONNOLLY (*Ottawa West*): Is it fair to ask, Mr. MacDonald, does it add anything to the present law?

Senator BRUNT: It is a question of policy.

The CHAIRMAN: That is a big question.

Senator WALL: Would it be fair to ask Mr. MacDonald this question, which may also be regarded as a loaded question: independent witnesses have claimed that because of these provisions for defences, it would be much more difficult to succeed with a prosecution; and, to refer to the latest prosecution, that of the pulp and paper companies, if these defences had been in the law there would have been so many additional excuses and by-passes, it would make it that much more difficult to secure a conviction.

Mr. MACDONALD: If you want to ask me a factual question about the pulp-wood case, Senator Wall, I will try to answer it, but I don't think I can give a useful answer to the committee on a speculation of that kind.

Senator POWER: I would suggest that paragraph (g) would probably cover what kind of weather they were having in Miami.

The CHAIRMAN: Any further questions on subsection (2)?

Senator THORVALDSON: I have one question, please. Mr. MacDonald, is there any precedent in any other country, such as either the United States or Great Britain, in their combines legislation in respect to these items 2(a) to (g).

Mr. MACDONALD: I am unable to direct you to any precedent that would be useful, Senator Thorvaldson. In order to do so I would have to direct you to a specific case. As far as the United Kingdom is concerned, I don't think that their legislation or jurisprudence is very helpful.

The CHAIRMAN: It would be helpful if the matter was a detriment to the public.

Mr. MACDONALD: No, Mr. Chairman. I meant in the sense of throwing up a case on the question which Senator Thorvaldson has raised. As far as the United States is concerned I have never looked at the record from this particular point of view. There have been cases in the United States where a verdict has been rendered under the Sherman Act, which talks about conspiracy in

restraint of trade, on various kinds of evidence of collusion, sometimes going very far—one case threw up the expression, “conscious parallelism of action”, which was pointed to as evidence of a conspiracy. I am not sure at the moment that that case was under the Sherman Act or one of the allied acts. However, I cannot think at the moment of a case that is directly in point.

Senator MACDONALD: Mr. Chairman, I understood the witness to say that there has been no charge of conspiracy based on any one of the items (a) to (g) on which a combination has been proved . . .

The CHAIRMAN: By itself.

Senator MACDONALD: Yes. If that is so, what is the purpose of putting in this clause?

The CHAIRMAN: I think the witness said earlier that that is a part of an overriding question of policy which he felt the Minister was more competent to answer in the circumstances.

Senator MACDONALD: I would not think that is a question of policy, but a question of fact. Is there any reason why it is being put in? If there is a reason for putting it in, then it may come down to a question of policy, but it is not a question of policy at the moment.

Senator CROLL: The witness is not to reason why—that is for the Minister.

Senator MACDONALD: I am not asking anybody to reason why.

Senator BRUNT: You are asking him why it was put in.

Senator MACDONALD: I will change the wording: what is the purpose of this clause?

Senator CROLL: I presume the Minister will tell us it is for the purpose of weakening the act!

Senator MACDONALD: I was trying to get some information from the witness, because I am at a loss to know the purpose of this clause.

Senator HUGESSEN: Do you not think the only answer that this witness can give to that question is “the Minister directed me to insert it”.

Senator MACDONALD: That may be so—that is the only answer I can think of.

The CHAIRMAN: Shall subsection (3) stand?

Some SENATORS: Stand.

The CHAIRMAN: Subsection (4), the export section. A number of questions seem to emerge in the debate last evening on this subsection. Are there any questions to Mr. MacDonald on subsection (4)?

Senator BRUNT: Did you pass subsection (4)?

Senator CROLL: Mr. MacDonald, I have this difficulty in my mind: You are the one who has to administer this act. How do you deal with it if one who is in business, part domestic, part export, how do you differentiate and how do you come to the mind that this part is quite all right to do some merging and combining and what not with respect to your export and it is not with respect to your domestic. How do you approach the problem?

Mr. MACDONALD: Well, perhaps we might take a case. Assume that somebody comes with a complaint that there is a combination relating to a particular area of trade and it has the ordinary earmarks of a combine. Well, we start to look into it and if it relates only to export of articles from Canada then we go on and look at other things in subsection (5). As I read this, if it does not relate only to export, if it relates in part to the domestic market, then we go on with our investigation in the ordinary way but if we are satisfied that it relates only to the export of articles then



we look also at subsection (5) and ask ourselves: does this result or is it likely to result in a reduction or limitation of volume of exports, and so through the other paragraphs. If we come to the conclusion that it does not have any of these results, always remembering that it relates only to export trade, then it does not constitute a contravention and a statement of evidence would not be referred to the commission.

Senator LAMBERT: Have you any experiences on that point?

The CHAIRMAN: This is new, Senator Lambert.

Senator CROLL: Has Great Britain any such law?

Mr. MACDONALD: The situation there is quite different because of their different pattern of their legislation. Very briefly it is this: If it is a domestic arrangement in restraint of trade it has got to be registered with a person called the registrar and he has to call it up to justify itself before the restrictive practices court, and it can be justified before that court on one of seven specific grounds and an over-riding ground that it is not on balance against public interest. Now one of these seven specific grounds is that if the restriction were removed export trade would be substantially damaged. Now, that is a domestic arrangement.

Now, if it is an export arrangement in the sense that the restrictions relate only to export, it does not have to be registered with the registrar at all, but it does have to be notified to the Board of Trade, and then the Board of Trade as a purely administrative step can refer that arrangement to a different body entirely, not the restrictive practices court, but a body called the monopolies commission, and the monopolies commission will examine it on a purely ad hoc basis and come back with an appraisal of it as to whether it is in the public interest or not, and if it is not in the public interest an appropriate department of the United Kingdom can initiate ad hoc proceedings to deal with it, culminating if necessary in a statutory order.

Senator CROLL: What about the United States?

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, before Mr. MacDonald deals with the United States. When they are considering this reference in the United Kingdom, before the statutory report issues, do they have regard to the effect which any agreement might have in respect of detail in the amount of trade in the sense that the article might not be competitive on the foreign market because of this agreement?

Senator LAMBERT: On the home market?

Senator CONNOLLY (*Ottawa West*): No, on the foreign market.

Mr. MACDONALD: I think I remember one case under the old United Kingdom legislation of an export arrangement where the industry in question—I think it was the tire industry—had entered into what I suppose would be called an international cartel by which it was assured of a certain percentage of the foreign market. My recollection is that the commission in that particular case said, "We do feel you are doing as well under this arrangement as you would if you were out competing with these other firms and we do not condemn it in this particular circumstance".

Senator CONNOLLY (*Ottawa West*): That was a case of combination?

Mr. MACDONALD: Yes.

Senator CONNOLLY (*Ottawa West*): A combination between a British manufacturer or a British operator and a foreign one. But are we not talking here about the case of Canadians dealing among themselves in respect of price fixing for export or other offences. I mention price fixing because that seems to be the one we are giving most attention to. The whole point of my questioning is this that through this legislation the foreign market is going to

be completely at the mercy of these Canadians who want to make those agreements and perhaps to the ultimate detriment of the volume of trade in these articles that is done abroad from Canada.

The CHAIRMAN: It must be on the basis that the combination is going to lead to higher prices.

Senator CONNOLLY (*Ottawa West*): Yes, and perhaps price themselves out of the market.

The CHAIRMAN: I think the combination might be to price themselves into the market because they are just now about priced out of the market.

Senator THORVALDSON: That is the whole truth of this thing.

Senator CROLL: Mr. Chairman, can I get back to the United States?

The CHAIRMAN: Section 5 (c) is the one that deals with the question you are talking about, Senator Connolly. That situation you describe would be a rather fantastic one, where the companies would combine to raise prices, with the result that they could not sell the product. I cannot conceive of manufacturers setting prices in the foreign market.

Senator McLEAN: You are absolutely right, Mr. Chairman, we have to take world prices when we sell our goods abroad and there can be no combine when it comes to world prices.

The CHAIRMAN: This is to permit a combine for export trade where they can get together and combine for lower prices.

Senator POWER: There has been some serious discussion with respect to a combine or let us call it a situation where there has been an unconscious exchange of statistics amongst newsprint companies where a rise in the price of export newsprint paper in one of the provinces was followed by one rise after another.

The Government of that province saw to it that the increase in price did not apply to domestic consumption because they said "If you do try to raise the price of newspapers you will feel it in your stampage dues." It has been felt by a great many people that the result of this combine, if I may so call it, to raise prices in another country, in the United States, has been the great increase in production and development of competition from paper makers in the southern states, which would not have been encouraged had our people not outrageously raised the price of paper. That has been said publicly by a great many people. I can quite understand what you say, Mr. Chairman, that the people who would do this have very little vision and are not farsighted, but here was a great industry in which it has been alleged it was done. They have created competition for themselves by raising the price to foreign countries.

The CHAIRMAN: The subsection here that bothers me is (b) particularly, and to some extent (c) because it strikes me the only kind of a combination for export which would have a chance to meet the conditions and enjoy the protection is a combination of all the people engaged in the business of producing for export. If you have less than all then the one who stands apart, if he is injured or is likely to be restrained or injured in any way in his business, has a complaint. Quite obviously if a combination of the majority of people in an export business leads to lower prices and increased volume of business, the other exporter is going to have to lower his prices or he is not going to do any business. Now, is that injury to his business contemplated by paragraph (b)? I think it is and, therefore, they would have to get him into the fold, and then if they get them all into the fold so that every person engaged in the export business is in that combination, then paragraph (c) comes along and you are then faced with this situation. Is this combination of all these people likely to make it impossible or to prevent anybody else

from getting into the export business? It was being faced with those two situations that led me to say that I thought they were giving something in one hand in subsection (4) and they were effectively taking it away in subsections (b) and (c).

Senator CROLL: May I follow up my earlier question? Will you tell us what the situation is in the United States, Mr. MacDonald? I want to exhaust this.

Mr. MACDONALD: In the United States you have the Webb-Pomerene Act which was passed in 1918. It defines an export association as an association engaged solely in export trade, and it exempts from the operation of the anti-trust laws such an association and agreements made by such an association provided they do not interfere with domestic competitors, provided they do not enhance prices within the United States, provided they do not restrict the export trade of the United States, and provided the association is registered with the Federal Trade Commission.

Senator CROLL: You used the term "solely in the export business".

Mr. MACDONALD: Yes.

Senator CROLL: Let us take an illustration under U.S. law of a United States company, say, General Electric of the United States. In their export business they might not be permitted to do perhaps what General Electric in Canada could do where for the purpose of export they could combine, whereas they could not do so in the United States. If they had any domestic business at all they could not combine.

The CHAIRMAN: It would have to be a separate operation.

Senator CROLL: Yes, that is what I am getting at.

Mr. MACDONALD: To take advantage of this exclusion from the anti-trust laws, by way of the Webb-Pomerene Act, the firms would have to form an export association. That does not mean, of course, that any co-operative activities in which they engaged without taking advantage of the Act would *per se* contravene the anti-trust laws. You would have to judge any such activities by the ordinary standards of those laws.

Senator LEONARD: In Senator Croll's illustration General Electric could be a member of an export association registered under the Webb-Pomerene Act.

Mr. MACDONALD: Yes.

Senator LEONARD: And still be in the domestic business.

Mr. MACDONALD: That is correct, as I understand it.

Senator THORVALDSON: Would not this legislation do exactly the same for Canadian firms? For instance, take tire manufacturers. They could form an export association, which would be a new corporation built entirely for the export trade, and if they could come within the language here that is the way it would be done, do you not think?

Mr. MACDONALD: I think that is correct.

Senator MACDONALD (*Brantford*): If the United States requires these companies to form an export association it must feel there is some benefit to someone, to the public of that country I presume. Did your department give consideration to a requirement that Canadian companies set up an export association?

Mr. MACDONALD: I think I can reply generally, Senator Macdonald, that the different methods of arriving at a qualified exclusion for export trade were widely considered.



Senator MACDONALD (Brantford): Did you come to the conclusion that the provisions contained in this bill are just as good as the provisions in the United States legislation whereby associations are required to be set up?

Senator CROLL: Is he expected to answer that?

Senator MACDONALD (Brantford): I don't know why not. If an export association is a good thing why should we not have them in Canada?

Senator THORVALDSON: That is why I made my remark a moment ago. I think if I were advising on this legislation I would advise that in Canada a group of manufacturers who want to export, be they tire manufacturers or electrical equipment manufacturers, should form an export company and consequently come within the legislation. It seems to me that is very nearly identical with the explanation you gave of the United States Act.

Senator BURCHILL: I would like to ask Mr. MacDonald whether there have been any prosecutions or whether there is any legislation at the present time under which you might prosecute in connection with the export business?

Mr. MACDONALD: There is no express mention of export trade in the anti-combines legislation at the present time. There has been one recent case—not a court case but one that came before the commission—which related in part to export trade.

Senator CONNOLLY (Ottawa West): There was no prosecution?

Mr. MACDONALD: It is still before the commission, Senator Connolly.

Senator CONNOLLY (Ottawa West): A combination in respect to export trade is just as subject to the act today as a combination in respect to domestic trade?

Mr. MACDONALD: Depending upon the domestic results.

The CHAIRMAN: If there are no domestic reflections?

Mr. MACDONALD: In my view the legislation would be interpreted for the protection of the Canadian economy, but it does not follow from that that an arrangement would be *ipso facto* excluded from the legislation simply because it related to export, because an export arrangement could obviously affect the Canadian economy.

Senator WALL: Suppose an export association is formed of tire manufacturers, paper manufacturers, fine machine manufacturers or what you will. I am thinking of section 5(b) which says that section 4 would not apply. Supposing the association were charging on the export market lower prices for goods than they were on the domestic market, would that be regarded as a contravention of section 5(b), and therefore section 4 would not be operative?

Mr. MACDONALD: I should not think that would necessarily be evidence of an undue lessening of competition in the domestic market. Various other factors might explain the difference, I should think.

Senator WALL: We are talking about prices.

Mr. MACDONALD: Yes.

Senator LAMBERT: It might have a very direct bearing on competition in the domestic market.

The CHAIRMAN: Any other questions on this subsection? There are a couple of questions I want to ask the minister.

Senator CROLL: I do not know what the feeling of the committee is, but it seems to me that we have given Mr. MacDonald a pretty good workout, but there are any number of questions that require the minister's presence, and I do not see how we can make any progress without having him here.

The CHAIRMAN: What I was going to suggest, Senator Croll, is that I think we should carry on. There are some of these sections on which we can get the

answers from Mr. MacDonald, and by the time we have gone through the bill, we shall have a certain number of sections stood for the minister. I suggest this might be a convenient time to adjourn until 8 o'clock this evening.

Some SENATORS: Agreed.

The CHAIRMAN: I have two things I want to tell the members. We are running short of the supply of bills, so please keep your copy. The second is that the Canadian Manufacturers Association are not making any further representations.

Senator McDONALD: They will not be here this evening?

The CHAIRMAN: They are not making any further representations.

The committee adjourned until 8 p.m.

—The hearing resumed at 8 p.m.

The CHAIRMAN: The committee will resume its consideration of this Bill, C-58. We had got as far as page 7 down towards the bottom of the page, section 33, the new section 33 dealing with mergers and monopolies. It strikes me as rather straightforward: having passed the definition of "mergers" and "monopolies", all it says is:

"Every person who is a party or privy to or knowingly assists in, or in the formation of, a merger or monopoly is guilty of an indictable offence and is liable to imprisonment for two years."

That is straightforward. The present provision is that every person who is a party or privy to or knowingly assists in the formation or operation of a combine, and so forth. This is dealing with a merger or monopoly because the combine comes under the other provisions.

Senator POWER: Instead of the word combine you put in merger or monopoly?

Senator WALL: We have left out "who knowingly assists in the formation of or operation of".

The CHAIRMAN: No.

Mr. MACDONALD: "Operation" is left out, yes.

The CHAIRMAN: Yes.

Mr. MACDONALD: It was considered that under the new definitions the words "or operation" did not contribute anything; that it was all covered by the words "is a party or privy to or knowingly assists in, or in the formation of".

Senator POWER: Knowingly assists in a merger. What does that mean—assists in bringing it about?

The CHAIRMAN: Being a party to the promotion of it.

Senator POWER: What would assisting in a merger mean—bringing it about, or the operation of it, or what? What does it mean?

Mr. MACDONALD: Being a party or privy to or knowingly assisting in, would, I should think, cover any person who was a party to the sort of acquisition that is defined as a merger.

Senator POWER: That would be in the formation. It says assists in, or in the formation of, a merger. A party would be a party to the acquisition would be assisting in the formation. I cannot understand what the words assist in a merger mean.

The CHAIRMAN: Knowingly assists in the merger or in the formation of the merger.

Senator POWER: I understand the formation of a merger but I do not understand assisting in a merger.

The CHAIRMAN: The offence, I take it, is the acquisition of such interests, that is the definition of merger.

Senator POWER: That would be assisting in the formation; it would not be assisting in. The acquisition is part of the formation. How do you distinguish between assisting in by acquisition and simply assisting in?

The CHAIRMAN: The offensive part of the definition arises where competition as a result of the merger is or is likely to be lessened, so that if I am a party to the merger and the competition is lessened I am guilty.

Senator POWER: I do not want to be like Senator Horner and say I do not understand lawyers but,—

The CHAIRMAN: You should learn to know yourself first.

Senator THORVALDSON: Take a look at page 1.

Paragraph 1, subparagraph 2, the definition of merger is given and it means acquisition. I admit it is doubtful the way it stands. I see your point but it seems to me it can be read to mean assist in the acquisition of by virtue of the definition.

Senator POWER: Assisting in the formation of a merger.

The CHAIRMAN: Might this be the situation? When you have people who assist in the formation of a merger then the merger has been completed and it carries on in a way in which it might be said to be lessening competition, there may be a different people who are the operating people from those who assisted in the formation.

Senator HUGESSEN: Does merger mean acquisition and does everything else under subsection (e) depend upon the acquisition? Then how can you say a person assists in the acquisition or in the formation of the acquisition when you come to 33?

The CHAIRMAN: You have something there, I agree.

Senator POWER: Does it mean a person who is in an executive capacity in the merger after it has been formed? Is that what it means?

The CHAIRMAN: The only thing I can say is that since they have coupled both definitions in here, both merger and monopoly, I can see how you might assist in a monopoly or assist in the formation of a monopoly much better than I can see how you might assist in the formation and assist in a merger having regard to the situation, because a monopoly is a situation and therefore they may have run into this complexity since they are covering both merger and monopoly.

Senator POWER: Would a man in an executive capacity in a monopoly be subject to this?

The CHAIRMAN: If he acts; the offence is in the word knowingly.

Senator POWER: If he is a director of a company which is a monopoly is he guilty under this?

The CHAIRMAN: Not necessarily. Knowingly means he knows that what is being done is a violation of the law.

Senator BRUNT: The last merger prosecution relates only to the company, not the directors.

Mr. MACDONALD: That is correct.

Senator CONNOLLY: A merger by its very nature is something in process of formation.

The CHAIRMAN: Yes; but as I have pointed out, the section creating the offence couples merger and monopoly. The monopoly is the situation and you can assist in that at any time.



Senator CONNOLLY (*Ottawa West*): One is a process and the other the result and the language is clumsy because you are trying to deal with two things which are not the same.

The CHAIRMAN: It does not necessarily follow. A monopoly is a merger in operation. The coupling of merger and monopoly creates some language problems. I agree with Senator Power in that regard. But if you are going to keep the two together I do not know how you can word it otherwise. Have you any comment to offer, Mr. MacDonald?

Mr. MACDONALD: If you were drafting a charge under this section dealing with a merger you might very well select the words "is a party or privy to or knowingly assists in" and you would not be required to use all the words in the section; on the other hand, if you were dealing with a monopoly then you might select the words "who is a party or privy to or knowingly assists in the formation of a monopoly".

The CHAIRMAN: Or in the operation.

Senator CONNOLLY (*Ottawa West*): Why do you not say, "who was a party or privy to or knowingly assisted in the monopoly or in the formation thereof"?

Mr. MACDONALD: You might do that too.

Senator CONNOLLY (*Ottawa West*): But you could not say all those things about the merger.

Mr. MACDONALD: That is right.

Senator HUGESSEN: "Or in the formation of": would it not be enough to say "knowingly assists in a merger or monopoly", and then you are carried back to the definition of merger as an acquisition.

Mr. MACDONALD: It seems to me that the words "in the formation of" as applied to a monopoly do add something that is not contained in the words assisted in.

Senator CONNOLLY (*Ottawa West*): "Every person who is a party or privy to or knowingly assists in or in the formation of a monopoly or who is a party or privy to or knowingly assists in the formation of a merger"?

Senator BRUNT: That would be more confusing.

Senator CROLL: Let us pass this section. We don't know what it means; let us pass it.

The CHAIRMAN: Senator Croll is being very generous this evening. I was going to say that if a situation ever arose where it was proposed to charge a merger and I were going to be defending I would like the charge to read that they knowingly assisted in the merger. That is the language I would like to see used. I think the language does limp, but it can be spelled out. What do you think of it, Senator Hugessen?

Senator HUGESSEN: It is a little confusing but it does not do any great harm.

Hon. SENATORS: Agreed.

The CHAIRMAN: Now we go to section 33A. That is the old section 412. Would you care to give an explanation of that, Mr. MacDonald?

Mr. MACDONALD: Section 33A, as you have said, Mr. Chairman, is the old section 412 of the Criminal Code relating to discriminatory and predatory pricing, amended by the addition of the words "or tendency" in paragraphs (b) and (c) of subsection (1). Paragraph (b) used to read "everyone engaged in a business"—actually it was trade, commerce or industry, but "business" picks up that idea—"who engages in a policy of selling articles in any area of Canada at prices lower than those exacted by him elsewhere in Canada

having the design or effect of substantially lessening competition or eliminating a competitor in such part of Canada". Now it has been changed by the introduction of the idea of having the tendency. If it is designed to have or has the effect or has the tendency it is an offence.

The CHAIRMAN: The thing that puzzles me is "tendency".

Senator CROLL: Define it.

The CHAIRMAN: What does that mean?

Senator CROLL: How do you define the word tendency, Mr. MacDonald?

Mr. MACDONALD: Some of the other words that were considered, Senator Croll, were likelihood and probability, and in the drafting it was considered that the word "tendency" was the closest to carrying out the idea of a course of action which if continued would, beyond mere probability, have the likelihood of creating a certain effect upon competitors.

Senator HUGESSEN: In proving section 412 you have to prove that this policy had the effect; in the amendment all you have to prove is that it would have the tendency, even though it had not had the effect up to that moment.

The CHAIRMAN: That is really going a long way.

Senator KINLEY: Suppose you had 200 or 300 employees and you gave them a 20 per cent or 10 per cent discount on everything they bought in the retail department. Would that be against the law? Everyone gives employees a lower rate. Would that be in restraint of trade?

Mr. MACDONALD: No.

The CHAIRMAN: Let us assume under subsection (b) that a person sold goods or articles in the western provinces at a price 25 per cent lower than the price elsewhere in Canada.

Senator KINLEY: They do not do that if they sell in the Maritimes.

The CHAIRMAN: We will change that. Let us assume that articles are sold in the Maritimes at 25 per cent less than the price elsewhere in Canada. The question is whether that difference in price—let us leave out the tendency—has the effect or is designed to have the effect of substantially lessening competition or eliminating a competitor in the Maritimes. I can understand that; but if you go to the next point and there is not enough evidence to establish that it has that effect or that it is designed to have that effect, then you say "Well, it has a tendency to have that effect".

Senator BRUNT: How would you ever prove that?

Senator HUGESSEN: I can see something in that. The competitor who is being discriminated against might go to the court and say, "If this course of action is pursued I shall have to go out of business because I am being undercut all the time." That is the tendency, though the effect would not be there yet. The tendency is there. He might say, "If this course of action is not stopped I shall have to get out of business", and therefore competition in that part of Canada will be lessened".

The CHAIRMAN: That is making the effect by bringing in the word tendency an absolute offence. If that is the tendency, that is the offence, and there are no explanations; it is just absolute.

Senator POWER: You are being penalized for thinking.

Senator HUGESSEN: The court would have to be satisfied there was a tendency. I was thinking of the sort of defence the court would accept.

The CHAIRMAN: Mr. Macdonald wants to speak to this point.

Mr. MACDONALD: Perhaps I can elucidate this a little. We carried out a number of inquiries as a result of complaints under section 412 to the effect that persons were selling either lower in one part of Canada under (b) or



unreasonably low under (c) and that their policy was designed to have the effect or was having the effect of eliminating competitors, that is to say, the persons complaining. Sometimes they alleged design, sometimes effect. In several of the inquiries we obtained evidence from which it could have been argued, in our view, that persons were engaging in a deliberate policy of maintaining different prices in one part of Canada from those maintained in another or that they were selling at prices which were unreasonably low; but when it came to the words "having or designed to have the effect of substantially lessening competition or eliminating a competitor", we could not establish a firm nexus between the activities of the person complained about and the detriment shown by the person complaining because there were so many other factors that might have come to bear upon the condition of the person complained about. It was apparent in some of these cases that the complainant was suffering from prices which could be argued to be unreasonably low or from a different policy in one part of Canada than in another; but to show that the pricing behaviour of A was directly responsible for the financial straits of B was something that could not be established. The behaviour of the people complained about did appear to have the tendency of eliminating a competitor, and while the actual competitor complaining had not yet been driven out of business, if the policy was continued it appeared that he was likely to be. There may be instances of business in Canada that may be economic and by the method of prosecution in this section you perpetuate the uneconomic one because the man who can sell for less because he is producing for less, and even though his price is lower he is not selling at a loss, yet he cannot do it because it might affect an uneconomic operation in that area. Once you get into the realm of "tendency" that is what you are doing. If the effect is there that is something else.

Senator TURGEON: I read from paragraph (b) of section 33A (1):

"...having or designed to have the effect or tendency of substantially lessening competition or eliminating a competitor in such part of Canada."

Now what would be the effect if the competitor was the one who had been doing the same thing previously, that is lowering prices in order to meet general competition and then both get together to meet that competitor's actions.

The CHAIRMAN: That is a different approach to competition. Competition is supposed to be the free flow of prices in an area, and then somebody comes in and sells his goods at a lower price and the other person instead of reducing his price comes to the combines investigation branch and says that this fellow is selling at prices which if persisted in will have a tendency to put me out of business. Possibly that fellow should introduce some economy in his business.

Senator TURGEON: But the last man would still be guilty, would be not?

Mr. MACDONALD: Senator Turgeon, to answer your question, I would think a person in those circumstances could hardly be charged with selling at unreasonably low prices.

The CHAIRMAN: Do not let us get to the next section, Mr. MacDonald—we are dealing with (b) and not with (c).

Senator BRUNT: Mr. Chairman, the minister gave a very good explanation of it before the committee of the other place. I have it here if you want to hear it. He said: "We have inserted the words 'or tendency' which were not there before because under a review that was made it became clear to us that before any offence could be established you must be in a position as it were of having a body to bring into court. You do, in a sense, have to be able to produce a bankrupt businessman to show that the effect of the unfair or discriminatory price policy alleged had the result of driving him out of business. That is why I say you have virtually to be in the position of being able to bring the body into court, but it is not much use to a man if you have to wait until after he is dead before you can take any action."



The CHAIRMAN: That explanation by the minister, Senator Brunt, is perfect in its application to the words "eliminating a competitor" but it does not have any application to "substantially lessening competition". In eliminating a competitor you have got to have the *corpus delicti*.

Senator BRUNT: When he finds that it is lessening competition you can proceed under that.

The CHAIRMAN: That is right, but the minister's explanation of having a any application to "substantially lessening competition". In eliminating a competition.

Senator CROLL: If you lessen competition you do not 'eliminate' him. What he is doing is trying to avoid the elimination by stepping in before the fellow is killed off.

The CHAIRMAN: You do not have to wait for a *corpus delicti*. It says even if the competition is substantial quite apart from the word "tendency"—if there is a substantial lessening of competition or if what is being done has the effect or is designed to have the effect of lessening competition, that is an offence. The word "designed" is in here, as well.

Senator CROLL: I think, Mr. Chairman, you are absolutely right so let us pass the section.

The CHAIRMAN: My friend overcomes me—he is so confused tonight that he is even agreeing with me.

Senator ASELTINE: Is the section not the same as the old section except for the word "tendency"?

The CHAIRMAN: Yes, and I cannot see as a result but that it creates a fantastic situation.

Senator LEONARD: Mr. Chairman, this is quite a different type of offence from the other provisions. This is under the price discriminatory section. Mr. MacDonald, you told us about some of your investigations running into that particular problem. Have there been many actual prosecutions in your experience, under this section?

Mr. MACDONALD: No, Senator Leonard, there have not.

Senator LEONARD: The section pretty well does its own policing by being there.

Mr. MACDONALD: I think it has had a considerable effect by just being there.

The CHAIRMAN: There is just one question I want to ask Mr. MacDonald. If you have a situation where you had one operation in the Maritimes where articles were being sold at 25 per cent less than they were being sold by several other manufacturers, and this section of the act were in operation, and you are asked to look into that situation on the basis that this situation has a tendency to lessen competition substantially up to the point of eliminating a competitor, would you go so far in your consideration of the case, and as to the answers to a possible charge, to inquire into the economy of the operations that were charging more for their product to see whether they were uneconomic and that that was the reason that the lower price was an uneconomic price.

Mr. MACDONALD: Yes, I think we would.

The CHAIRMAN: Well, I have the answer that I wanted. I was afraid that this was an absolute offence and if you established that set of circumstances the door was closed. Now, if the situation is factual and you can inquire into the economics of operation both of the lower price operation and the higher price one to see whether the difficulty is not in the uneconomic operation of the higher priced product, then the field is open.

Senator KINLEY: Mr. Chairman, price is not altogether a controlling factor. A man in the Maritimes has a little operation, a little business, and a big concern with a big turnover here in the central provinces has a surplus of stock and dumps the whole thing in the Maritimes, and he can sell that surplus cheap because he has no overhead on it, he earned his overhead expenses here.

The CHAIRMAN: Of course he has to pay to get it in there.

Senator KINLEY: Yes, he has to pay the freight charges of course.

Senator BURCHILL: Mr. Chairman, we have had many instances in the past in the Maritimes of small industries of which we have been very proud, which have been crowded to the wall and closed up and disappeared on account of the larger industries from more prosperous parts of Canada whose turnover and that sort of thing were heavy coming down to the Maritimes and selling at much lower prices thus eliminating them, and in many cases buying them out because they could not survive. Now I take it from the discussion tonight that in virtue of this amendment a situation like that could be inquired into, could it, Mr. MacDonald?

The CHAIRMAN: Well, the difficulty is in using the criminal law to regulate certain uneconomic business situations.

Senator BURCHILL: But the "tendency" is in a situation like that, is it not?

Senator KINLEY: We stopped dumping of goods into Canada from the United States. We do not allow them to dump any more.

The CHAIRMAN: Are we getting to the stage of talking about dumping as between provinces?

Senator KINLEY: Yes, every province must look out for itself.

The CHAIRMAN: Well, I have had an answer that satisfies me.

Mr. MACDONALD: May I just add one thing to the record, in the light of what Senator Brunt said, because in my previous reply I do not think I paid sufficient attention to the particular point that he brought out.

Senator Brunt brought out the point, and Senator Hugessen referred to it also, that under the present section you had to show, in the case of alleging effect, that it actually had had the effect of putting somebody out of business. Now, that point did arise in what was called the *Edmonton Cigarette Case* which was the subject of an actual report. It never went further than the report but in that case the commission said, "We do not find in the circumstances that the prices are unreasonably low or that there has been a deliberate policy of charging prices lower in one part of Canada than in another." Then they went on to say in effect: "Even if that had been the case you have not shown us that anybody has actually been put out of business," though there was actual evidence showing financial difficulties on the part of competitors which, if continued, it would be logical to conclude, might very well put them out of business.

Senator CONNOLLY (*Ottawa West*): What about a case where the competitors are running an uneconomic operation?

Mr. MACDONALD: I would be inclined to think, Senator Connolly, that the words "engaged in a policy of selling articles in any area of Canada at prices lower than those exacted by him anywhere else in Canada" mean more than that merely economic considerations resulted in lower prices in one part of Canada than in another.

The CHAIRMAN: Of course, at this stage the question is which horse are you riding? You are depriving the consumer immediately of a lower price in order to maintain an industry that may be uneconomical.

Senator KINLEY: If a manufacturer up here in central Canada wants a tariff to keep his men employed that is one thing, but what do we get in the

Maritimes? The premier industry is the fishing industry but they want no part of tariffs. Up here a manufacturer may get a tariff on his goods right away because sentiment is for it, but that is not the case down east.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Under (c) I would like to ask Mr. MacDonald what is the test with respect to unreasonably low prices? How do you test that?

Mr. MACDONALD: Mr. Chairman, I can only say that the courts would have to look at all the circumstances and come to a judgment having regard to the kind of operation the person is carrying on, his costs of doing business, and so forth, and whether those prices had economic rationalization, so to speak, or whether they were what might be called unreasonably low.

The CHAIRMAN: Dealing with Senator Kinley's earlier remark about dumping surplus produce from central Canada into the Maritimes, I think an analogy is that you would not expect the cost for the end run as being the true cost in arriving at whether the price is unreasonably low or not, would you?

Mr. MACDONALD: I understood Senator Kinley to be putting his case more under (b), selling at different prices in different parts of the country.

Senator KINLEY: I am talking about the invoice price, and dumping.

The CHAIRMAN: Dumping suggests unreasonably low, doesn't it?

Senator KINLEY: Of course it does.

The CHAIRMAN: And I am just trying to get a measuring stick for determining what is unreasonably low.

Senator KINLEY: Below his invoice price at home.

The CHAIRMAN: I do not think I was unreasonable in asking how Mr. MacDonald would make his determination of what is unreasonably low. What yardstick would you use? How would you go about making a determination? That is all I want to know.

Mr. MACDONALD: In the case that I mentioned, where we were not successful on the argument that the prices were unreasonably low, and not successful on the argument as to effect, we argued along these lines: that having regard to the margin that he was taking on other articles, not his average margin though certainly not his highest margin—I think we argued on the basis of the lowest margins he was taking—having regard to the comparative handling costs involved and like factors, the prices he was charging for cigarettes were such as to give him no return and were unreasonably low.

The CHAIRMAN: So you are going to protect the man against his own folly, is that it?

Senator THORVALDSON: This section is identical with the old one with the exception of certain words.

The CHAIRMAN: Yes, but since the witness is here I think we have a right to ask the questions we are asking.

Senator THORVALDSON: Oh, yes.

The CHAIRMAN: Shall subsection (1), which includes all these items we have been talking about, carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Subsection (2) provides a defence. That is always interesting. Shall this carry?

Senator BRUNT: Is it broad enough?

The CHAIRMAN: If it included the other paragraphs it would be better but it only deals with paragraph (a).



Mr. MACDONALD: I think the same defence is, so to speak, built into paragraphs (b) and (c) because those paragraphs refer to engaging in a policy of selling, and so on.

The CHAIRMAN: That's right.

Some Hon. MEMBERS: Carried.

The CHAIRMAN: Subsection (3) provides for an exemption in the case of co-operative societies. Is there any question in respect to that?

Senator BRUNT: Nobody will argue about that.

Senator KINLEY: It is only with respect to their dividend.

Hon. SENATORS: Carried.

The CHAIRMAN: That brings us to the end of section 33A, so that has carried. Then we come to section 33B which deals with what have been called promotional allowances. Possibly we should have some explanation from Mr. MacDonald on this.

Mr. MACDONALD: This section is, of course, new. It deals with allowances for advertising or display purposes and it provides in effect that where such allowances are granted by manufacturers or suppliers to competing trade customers they must be granted in proportion to the sales made to the respective customers. In other words, if a manufacturer grants an advertising or display allowance to one customer he must allow each competing customer an allowance bearing the same ratio to such customers purchases as the allowance to the first mentioned customer bore to his purchases. The genesis of the section, as the explanatory note indicates, was the report concerning Discriminatory Pricing Practices of the Restrictive Trade Practices Commission, and the report of the Royal Commission on Price Spreads of Food Products, known as the Stewart Report.

The CHAIRMAN: Perhaps we could take an illustration of that. Let us assume you had a sale of \$100,000 worth of merchandise and the person buying that was given an allowance of \$5,000 for advertising. Therefore, the relationship would be 5 per cent. Is that right?

Mr. MACDONALD: That is correct.

The CHAIRMAN: Then if there is another person who purchases the same kind of goods to the extent of \$1,000, he would have to have a 5 per cent allowance.

Mr. MACDONALD: That is correct.

The CHAIRMAN: And that allowance would be \$50.

Mr. MACDONALD: That is correct.

The CHAIRMAN: That is the basis of it.

Senator KINLEY: Is this an old section?

Mr. MACDONALD: No, it is new.

Senator KINLEY: You pay half and the manufacturer pays half. He says, "I'll pay half the advertising if you put so much advertising where we agree to put it, over the radio or in a newspaper."

The CHAIRMAN: That would not be prevented but he would have to make the same proportionate offer to all his customers.

Senator BRUNT: Mr. MacDonald, I understand that allowances are made by some firms if they are given a choice display spot in the store, say right beside the cash register.

The CHAIRMAN: No, the limitation is for advertising or display purposes.

Mr. MACDONALD: If the allowance were granted to one merchant for that purpose then the intent of this section is that a proportionate allowance would have to be granted to other competing merchants on conditions that they could fulfill.

Senator BRUNT: But who is to place a value on the display part of the counter beside a cash register in Loblaw's and a corner grocery store?

Mr. MACDONALD: I do not think that under this section you would have to undertake to put an exact value upon that. If an allowance were granted subject to a display condition to one merchant, then a proportionate allowance would have to be granted to his competitors subject to a similar display condition that they could carry out.

Senator BRUNT: But the two displays might be identical, one beside a cash register at Loblaw's or Dominion Stores, which is great advertising value, and the other beside a cash register in an identical position in a corner grocery store.

The CHAIRMAN: It says here in the bill, " 'allowance' means any discount, rebate, price concession or other advantage that is or purports to be offered or granted for advertising or display purposes and is collateral to a sale or sales of articles but is not applied directly to the selling price". So there has got to be some value made for the allowance, and it has to be translated into dollars, and might be a percentage of say 3 or 5 per cent.

Senator BRUNT: The allowance is agreed upon in advance before any sale is made.

The CHAIRMAN: But it has to be translated into dollars before it can apply here. I do not know how this could work, Mr. MacDonald, if you do not translate it into dollars, do you?

Mr. MACDONALD: No, Mr. Chairman. The conditions are then set out, Senator Brunt, in subsection 3, that is, the conditions under which an allowance will be deemed to be offered on proportionate terms.

Senator BRUNT: Mr. MacDonald, supposing a flat allowance of \$1,000 was made to a large grocery store.

The CHAIRMAN: Well, what would be the total of the sales? You would have to know that.

Senator BRUNT: Well, say \$1,000.

The CHAIRMAN: That is the allowance?

Senator BRUNT: Yes.

The CHAIRMAN: But that does not mean anything unless you know what the dollars of sales are, because one has to be related to the other under this section.

Senator BRUNT: Well, regardless of the amount sold, it is agreed upon in advance.

The CHAIRMAN: There has to be a dollar amount; the section says that.

Senator KINLEY: Supposing you are starting out with no sales—a new venture?

The CHAIRMAN: Well, then there is no question of the application of this section.

Senator KINLEY: Mr. Chairman, may I ask how this affects a dealer or agent who deals with a customer exclusively?

Mr. MACDONALD: Well, if he deals exclusively with you, Senator Kinley, I don't think the question would arise under this section, because this section only comes into play when there is a discrimination between competitors.

The CHAIRMAN: The allowance must be proportionate.

Senator BRUNT: Take the case of a large wholesaler in groceries, who goes into two grocery stores. He thinks they will pay about the same. So he gives each \$1,000 for a display beside the cash register. One sells twice as much as the other. Is he guilty of an offence?

Mr. MACDONALD: The person who sold twice as much would under this section be entitled to an allowance proportionately twice as large.

Senator BRUNT: Then the question arises whether he pays back half or the other fellow gives him another \$1,000.

Mr. MACDONALD: That question would arise, yes.

Mr. CONNOLLY (*Ottawa West*): May I ask a question, Mr. Chairman? I am going to add somewhat differently to this question, but perhaps with the same result. Supposing this situation obtains, where you have a manufacturer selling to a wholesaler, say in the grocery business, and he sells the goods. Many wholesalers not only distribute these goods and sell them to chains, but also to corner stores. These wholesalers, though, in addition to being distributors of goods also set themselves up as advertising agents. They come to the manufacturer and they sell what they call a deal—a promotion, and they say, “You pay us so much money and we will push certain of your lines in certain stores at certain prices, at certain times, and in certain ways”. Some of these ways have been described by Senator Brunt—newspaper or radio advertising, or what have you. Now, I ask the committee to remember this, that these people who are doing this, first of all, are wholesalers, they are not manufacturers, they are not retailers; but they are operating in this instance not as wholesalers but as advertising agents—promotion agents. Now, they may sell a tremendous quantity of goods as the result of these promotions. What is the position then of that manufacturer say in respect of the payment that he makes under those special contracts as against the position that he is in with respect to other chains or other individual outlets to which he may sell direct? Has he got himself away from the law?

Mr. MACDONALD: Well, if the persons that you describe as wholesalers, Senator Connolly, are acting in a different capacity entirely, as advertising agencies for the manufacturer, so that it cannot be said that the payments to them are collateral to sales, then it seems to me that the situation would not come under the section. But if it can be said that the payments are collateral to sales, even though they are not taken into direct account in the selling prices, the manufacturer would have to deal on proportionate terms with all his competing customers.

The CHAIRMAN: Is this section intended to apply at the wholesale level as well as the retail level?

Mr. MACDONALD: It would apply at the manufacturing level and the jobber level and wholesale level.

The CHAIRMAN: As well as retail?

Mr. MACDONALD: Well, it would apply upward at the retail level, of course, but not downward.

Senator KINLEY: Most of the national advertising it at the manufacturer's level, and that would not touch the retailer at all.

The CHAIRMAN: I am wondering if a manufacturer sells to a wholesaler how that comes under any principle of combines legislation. If a manufacturer sells to a wholesaler, how does that come under any principle of combines legislation? I can understand if there is discrimination at the level where they are selling to the public. I can follow that. But I may limit my sales to certain wholesalers; it may be just one wholesaler who can buy my product.

Mr. MACDONALD: This would only apply as between those wholesalers to whom you as a manufacturer were selling. It does not compel you to take on accounts you would not otherwise be obliged to deal with.

The CHAIRMAN: It talks about competing, but if I am selling to a wholesaler in Toronto, a wholesaler in Montreal, a wholesaler in Winnipeg, a wholesaler in Vancouver and one in Halifax, would you put them in the catalogue of competing purchasers from me?



Mr. MACDONALD: You cannot answer that question generally. In some cases they might be, in some cases they might not be. You have to look and see the territories they cover.

Senator ASETINE: They would not come under this section.

Senator CONNOLLY (*Ottawa West*): Suppose in the case the chairman describes there were contacts for promotion at certain times for certain products with individual wholesalers: Would that fact take them out of the operation of the statute? Because wholesalers say this too. They are selling a promotion; they do not have to take it. They will go to some manufacturers and will push those goods at that time for those persons.

Mr. MACDONALD: If wholesalers are in competition with each other, then the section requires that they be offered the same proportionate deal.

Senator BRUNT: How can a wholesaler in Halifax be said to be competing with one in Vancouver?

The CHAIRMAN: In section 2 the language is other purchasers in competition with the first mentioned purchaser.

Senator CONNOLLY (*Ottawa West*): Would it matter whether in the book-keeping of the manufacturer it was done as a payment for a contract or as a rebate?

Mr. MACDONALD: I do not think so, Senator Connolly. If it were collateral to the sale and were for the purpose of advertising or display and the two people were in competition with each other, the section would still apply.

Senator CONNOLLY (*Ottawa West*): There would have to be competition between the wholesalers.

Mr. MACDONALD: Before one could complain, yes.

The CHAIRMAN: If I give different rates of discount to different purchasers on a quantity basis and nothing is said about advertising or display it is completely outside the section.

Mr. MACDONALD: As long as the same deal is open to your different competing customers.

The CHAIRMAN: For buying the same quantity.

Mr. MACDONALD: Yes.

Senator CRERAR: A supplier sells \$100,000 worth of goods to customer A and gives him a discount of 10 per cent which he has to use for advertising; the same day he sells \$1,000 to customer B; he has to give him also 10 per cent for advertising or display or whatever it may be. Supposing customer B says, "Well, I don't think I will advertise or display" and he puts the 10 per cent in his pocket or reduces goods by that amount. Is that an offence?

Mr. MACDONALD: The manufacturer is entitled to require performance of the conditions attached to the payment.

Senator CRERAR: If he refuses, what recourse has the supplier got as the supplier? Can he cut him off?

The CHAIRMAN: You are overlooking the language in the section, which is that the manufacturer who offers the kind of deal you are talking about to one purchaser must offer it on the same percentage terms to the other. If that purchaser wants to buy goods and does not want to take the money on the same basis of advertising or display, I would say he does not get the money and there is no offence.

Mr. MACDONALD: That is correct.

Senator LEONARD: You asked Mr. MacDonald a question and I am not sure he answered it. Your question related to discount for quantity sales without regard to advertising or display.

The CHAIRMAN: Yes.

Senator LEONARD: Is that covered by this?

The CHAIRMAN: No.

Mr. MACDONALD: This covers only advertising or display.

Senator KINLEY: You do not run into provincial rights on this, do you?

Mr. MACDONALD: Not so far, Senator Kinley.

Senator KINLEY: What about stamps—say in the I.G.A. stores?

The CHAIRMAN: They are not given for the purpose of advertising or display.

Senator KINLEY: They are given as a premium.

The CHAIRMAN: Green stamps are given to the consumer. The section we are dealing with is between purchasers of these goods.

Mr. MACDONALD: Stamps would not come under this legislation.

Senator KINLEY: What about the one cent sale?

Mr. MACDONALD: I do not think this would touch the one cent sale.

The CHAIRMAN: Shall section 33 be carried?

Section carried.

The CHAIRMAN: Now we come to section 33C—misrepresentations as to ordinary price. This has to do with the case where you see the regular price represented as so much and this price so much less.

Very often it would be difficult to establish that there was any regular price and I assume you have had many objections which have brought about this section, Mr. MacDonald?

Mr. MACDONALD: We came across cases in the course of our inquiries where the evidence showed that a fictitious regular price was being put before the public in order to make it appear that a bargain was being offered or to exaggerate the bargain that was being offered, and this section is to deal with that express situation.

Senator LEONARD: Was there not any other legislation dealing with the same type of misrepresentation?

Mr. MACDONALD: There is a section in the Criminal Code, Senator Leonard, but it was considered that this goes further than the Criminal Code section. My recollection is that some doubt was entertained as to whether a misrepresentation simply as to the price at which the article was ordinarily sold would be held to come under the Criminal Code section.

The CHAIRMAN: Subsection (2) provides for exemption in the case of some person who publishes such advertising in the ordinary way which he has accepted in good faith.

Senator HUGESSEN: What is the object of that?

Mr. MACDONALD: The exemption?

Senator HUGESSEN: Yes.

Mr. MACDONALD: It parallels exactly the exception in the Criminal Code under the section relating to fraudulent advertising, and it is to cover the case where a merchant comes to a newspaper and tenders an advertisement and the newspaper accepts it in good faith.

Senator WALL: Could I ask this one specific question? Would this section cover instances where they are supposedly wholesale but they are really retail outlets and they have catalogues of various kinds. You are supposed to be getting a special price. You go there and they give you a catalogue—a watch, let us say, supposed to be selling for so many dollars. You are to get it at 40 per cent less and you find the regularly advertised articles are priced much higher in these catalogues. Do you know what I am driving at?

Mr. MACDONALD: Yes. It would catch that situation because the price that is held out in the catalogue as the regular price is much higher than the regular.

The CHAIRMAN: Which regular are we talking about—the price at which the watch is regularly sold on the market or the regular price so far as this particular company is concerned?

Senator ASELTINE: The latter.

Senator BRUNT: They say “regularly sold on the market at so much” and “our price is so much”.

The CHAIRMAN: They could simply say “regular price”; in other words, our regular price.

Senator BRUNT: They don't. They say regular price, and “our price” down below.

The CHAIRMAN: “Regular price” might be construed as being their regular price. If they were smart, that is the way they would have it.

Senator MACDONALD: This section only refers to price. They can make any other misleading representation.

The CHAIRMAN: They are covered.

Senator MACDONALD: This is not covered.

The CHAIRMAN: This is only intended to cover price because they did not feel that price was misrepresentation in relation to the article itself.

Hon. SENATORS: Carried.

The CHAIRMAN: Now we come to section 14. Are there any questions or do we stand it?

Senator ASELTINE: This is for the purpose of protecting the small businessman?

The CHAIRMAN: It certainly is not.

Senator BRUNT: Let us pass this without argument.

Senator MACDONALD: Would you like to strike it out without argument?

Senator CONNOLLY (*Ottawa West*): I would like to hear from Mr. MacDonald.

Mr. MACDONALD: This adds subsection (5) to section 34. The effect is that if in a prosecution under section 34 for resale price maintenance, the person charged proves that he refused to supply an article to the customer in question for one of the reasons enumerated in (a) to (d), which he had reasonable cause to believe, and did believe, to exist, then his motivation shall not be misconstrued as resale price maintenance.

Senator CRERAR: This would make it more difficult to get convictions.

The CHAIRMAN: Mr. MacDonald is not in a position to express an opinion as to the effect. He is here to explain the section. In explaining it though, Mr. MacDonald, you may have to agree that it does put a measure of discretion, substantial or less than substantial, in the manufacturer of the article which did not otherwise exist in the area of resale price maintenance.

Mr. MACDONALD: That sort of thing is so bound up with policy and the effect of the section that it should be left for the policy explanation, and my refraining from replying to this sort of question should not be taken as an indication of one view or another. I presume, since you will be asking the Minister about this, the preferable course is to wait.

The CHAIRMAN: On the question of explanation, if we look at (a), how would one go about making a determination as to whether or not in a particular case the selling was not for the purpose of making a profit but for the purpose of advertising? What are the factors one would look for?



Mr. MACDONALD: I think that some of the factors that would be considered have already been discussed under section 33A.

The CHAIRMAN: If in fact it turned out, on analysis of the figures and accounts of the merchant, that he was making some profit, maybe not as high a profit as in other lines he carried, but that he was making some profit, how would that affect your view of the situation?

Mr. MACDONALD: I think the courts would have to look at all the facts to reach a judgment as to whether the article was being sold for the profit it was bringing in or as an advertising medium.

Senator THORVALDSON: Has there been an increase in the last few years in the use of this practice of loss-leaders? I just ask that for information, if it is a fair question.

The CHAIRMAN: Mr. MacDonald is uncertain as to whether he should answer or should not. Perhaps I could ask a preliminary question that would lead him up to it.

When the MacQuarrie Report came out in 1951, which preceded the enactment of our resale price maintenance law, one thing that was considered in that report was the question of loss-leader, and there was quite a discussion in the report as to what if anything should be done by way of resale price maintenance to deal with the situation.

At that time they dismissed it. They said, in the circumstances as existed in 1951 there wasn't loss-leader selling—it was not an important question, because the loss-leader selling did not amount to any consequence in an era of inflation and scarcity of goods. That was the situation in 1951.

Now, I put that as the basis, and I ask you, do you suggest that the situation in relation to inflation and scarcity of goods has changed between 1951 and 1960?

Mr. MACDONALD: I feel, Senator Hayden, that that is getting into an area which you would like to ask the Minister about.

Senator BURCHILL: I do not think we should press Mr. MacDonald in that respect.

The CHAIRMAN: I am not pressing him, and I do not think Mr. MacDonald feels he is being pressed.

Senator THORVALDSON: It was in the light of those very facts that I asked the question, and I thought you might have a ready answer to it in the light of your investigations. I am not pressing the point.

Mr. MACDONALD: I would prefer to leave that question.

Senator BRUNT: I cannot understand why we are having all this trouble over this section, because in the committee of the other place it went through promptly.

Senator LEONARD: Mr. Chairman, may I ask a question that really does not relate particularly to the amendment? I would like to know what has been Mr. MacDonald's experience since section 34 was put into the act, as to the affect of that section on resale price maintenance agreements. Have they gone out of operation?

The CHAIRMAN: Or have there been many prosecutions?

Mr. MACDONALD: There has been a small number of investigations and prosecutions, Senator Leonard. I can tell you the exact number if you would like to know.

The CHAIRMAN: Would you have some general information as to the number and the type of agreement that was in effect before the act was put into the statute?

Mr. MACDONALD: No.

The CHAIRMAN: Are your statistics divided by years?

Mr. MACDONALD: I have a running record, Senator Hayden, which I can run down quite quickly. I shall go back to 1951 and run down the cases.

There were two resale price maintenance reports in 1953. In the first case there was no prosecution on advice of counsel, and in the second there was a prosecution and a conviction. In 1954 there was a resale price maintenance report followed a prosecution and conviction. In 1954 there was a second report where the commission expressed the view that no offence had been committed. In 1955 there was another report of resale price maintenance, followed by prosecution and a conviction.

Senator THORVALDSON: Who was the prosecution against in those cases, the manufacturer or the retailer?

Mr. MACDONALD: If I may just finish this, Senator Thorvaldson...

Senator BRUNT: There were none in 1956, 1957 and 1958?

Mr. MACDONALD: None in 1956, 1957 and 1958, by way of published report. In 1959 there was one case relating to resale price maintenance and another one in 1960. That appears to be the record of published reports.

Senator BRUNT: There were two reports.

Mr. MACDONALD: One in 1959 and one in 1960.

Senator BRUNT: And one prosecution?

Mr. MACDONALD: No; they are still in the consideration stage.

Senator LEONARD: Is the inference in my mind a fair one, that there does not seem to have been much in the way of resale price maintenance since the section was put into effect?

Mr. MACDONALD: I can say that we investigated all the serious complaints that were brought to our attention, and this is the result.

The CHAIRMAN: There were seven investigations and three prosecutions.

Mr. MACDONALD: To go back over the record, which I do not have here, I would probably find some resale price maintenance cases that had been discontinued short of the formal stage of presenting a statement to the commission. Each year a certain number of cases is discontinued and it is reasonable to expect that several would have related to this section.

Senator LEONARD: May I follow up my previous question with another question that does relate to the amendment? Under this amendment, before it came into effect as evidence for a defence, you must still prove in a prosecution that there is in fact a resale price maintenance agreement?

Mr. MACDONALD: In effect, yes.

Senator LEONARD: That is the offence, to start with.

Mr. MACDONALD: That is the offence, to start with.

Senator LEONARD: And you must prove that to be successful in the prosecution.

Mr. MACDONALD: Yes.

Senator LEONARD: If it is not proved, then this provision does not come into effect.

Mr. MACDONALD: I think that is correct.

Senator LEONARD: And you have to go on from there and prove that the vendor has refused to supply goods, by reason of that agreement?

Mr. MACDONALD: No, Senator Leonard, I do not think you would have to go on to prove that. If you proved a resale price maintenance agreement in the sense that I take you to mean it—it would appear to me that the offence would be proved.

The CHAIRMAN: Your offence then would be under subsection 2 of section 34.

Senator LEONARD: Is that not related to a refusal to supply goods?

Mr. MACDONALD: Yes.

Senator LEONARD: You have first proved an agreement, and secondly that the manufacturer, pursuant to his agreement, has refused to sell to his dealer because the dealer has not lived up to his retail price agreement. Is that not so?

Mr. MACDONALD: No, I don't think so, Senator Leonard.

The CHAIRMAN: They are independent. Subsection 2 of section 34 provides for an offence which is the existence of a resale price agreement, and subsection 3 provides for the refusal to supply. That is the offence, for the reason that such a person has refused to re-sell at the price stipulated.

Senator THORVALDSON: Mr. MacDonald, in those cases who is prosecuted, the buyer or the seller?

The CHAIRMAN: The statute says the dealer.

Mr. MACDONALD: Just the seller.

Senator HUGESSEN: May I ask one question, which I don't think relates to policy, but which rather confuses me?

Paragraph (c) of subsection 5 relates to misleading advertising by the retailer, and it provides that the manufacturer shall not be chargeable under this section if the retailer is making a practice of engaging in misleading advertising. Well now, this is an amendment to section 34, and the offence under subsection (3) of section 34 is that the dealer has refused to supply an article to the retailer because the retailer has refused to resell it at a price fixed by the wholesaler. That is right, isn't it, Mr. MacDonald?

Mr. MACDONALD: That is correct.

Senator HUGESSEN: What has that got to do with misleading advertising? In other words if you prosecute the manufacturer and he said "I did not refuse to supply these articles to this retailer because he would not resell them at a prescribed price, I refused to do that because he was engaging in misleading advertising." Wouldn't that be a complete defence regardless of what is in that paragraph?

Mr. MACDONALD: I will put it this way: the Crown would always have to prove a positive case under section 34. The Crown would have to prove a positive case of (a) an attempt to enforce resale price maintenance, requiring or inducing, or attempting to require or induce, or (b) a refusal to supply for the reason that the customer was refusing or failing to maintain prices prescribed.

Senator HUGESSEN: Would his defence not be a perfectly good one if he said, "I did not refuse to supply him because he was not selling at the prices prescribed, I refused to supply him because he was engaged in misleading advertising."

Senator ASELTINE: Wouldn't the same thing apply to subsection (d)?

Senator HUGESSEN: Exactly. Wouldn't he have a similar defence in virtue of subsection (d)? If the manufacturer was being prosecuted under subsection (3) but proved that the reason he refused to supply the retailer was not because the retailer would not maintain resale prices but because the retailer was not servicing the article properly for his customers. I just wonder what is the necessity of having these paragraphs in there.

Senator ASELTINE: It doesn't do any harm to have them in there.

Senator HUGESSEN: Yes, but what is the reason of there being there?

Senator BRUNT: Mr. MacDonald, are these defences available now?

Mr. MACDONALD: Let us assume that a person is charged and a prima facie case is made out against him either that he has, to simplify it, (a) induced the



customer to resell at the price he prescribed or (b) that he refused supplies to the retailer, his customer, for refusing to sell at the prices he prescribed. If the accused, then, as a result of that *prima facie* case, goes on the stand and satisfies the court, upon any ground, that he did not induce the retailer to sell at a specified price or that he did not refuse supplies because the retailer had refused to sell at a prescribed price—if he satisfies the court to that effect—I think clearly he has a defence.

Senator POWER: If the manufacturer was to plead that the retailer had not paid him for a year, would that be a defence?

The CHAIRMAN: He might say, "You are on a cash basis."

Senator KINLEY: You can always send it to him C.O.D.

Mr. MACDONALD: We must always remember here, Senator Power, that before the question of defence arises at all there has to be a good *prima facie* case against the person charged, that is (a) that he induced the maintenance of a price or (b) he refused supplies because the retailer was refusing to maintain that price.

The CHAIRMAN: Yes, but Senator Hugessen's point is that you are enumerating certain items (a) to (d), and certainly (c) and (d) which are defences, but at the same time there may be more defences which are not enumerated. Now, are you excluding them by this enumeration so that the only defences able to be raised are the ones that are set out in section 14?

Senator CONNOLLY (*Ottawa West*): For example, the question has been raised by Senator Hugessen and Senator Power that suppose the buyer is a bad risk, a bad pay, and even if you do prove the agreement, and the manufacturer says "I am not going to sell him any more" and he is charged and asked why and he tells the court, "This fellow has not paid me." That is a good defence, is it not?

Mr. MACDONALD: What is the agreement that you speak of, Senator Connolly?

Senator CONNOLLY (*Ottawa West*): An agreement to sell.

Mr. MACDONALD: That is the offence, there.

Senator BRUNT: He is guilty right then and there.

The CHAIRMAN: Are there any other questions? We are standing this section.

Senator MACDONALD: I would like to know who conducts such prosecutions?

Mr. MACDONALD: The prosecution is conducted by the Attorney General of Canada.

Senator MACDONALD: Not by the provincial Attorney General concerned?

Mr. MACDONALD: Up until the present time most prosecutions have been carried nominally by the Attorney General of a province, in fact by the Attorney General of Canada. The last one or two prosecutions have been carried nominally and in fact by the Attorney General of Canada. I am speaking about prosecutions generally under the anti-combines legislation.

Senator MACDONALD: On a prosecution under this section whereby a merchant's supplies are cut off, where would he go to lay a complaint?

Mr. MACDONALD: He would likely come first to the combines branch.

The CHAIRMAN: Of course he can go out and swear an information in the police court.

Mr. MACDONALD: Exactly.

Senator MACDONALD: And if he did that would the prosecution be taken over by the Attorney General of Canada?

Mr. MACDONALD: I am not sure that that would follow, Senator MacDonald. I have no precedent on that. The prosecutions that have been conducted in fact by the Attorney General of Canada, whether or not he had the nominal carriage of the case, were prosecutions that developed out of investigations and reports. I could not say what would likely happen in a case where an individual laid an information and said, "Now I have a commitment for trial, who is going to take it from here?"

Senator BRUNT: Does this section tell you what you have to do?

Mr. MACDONALD: The normal course, Senator Brunt, in offences under the anti-combines legislation, is that the complainant comes to the Combines Branch with the complaint. There was a case out in B.C. several years ago where a private individual laid an information under section 412 of the Criminal Code, which is now section 33A of the Combines Investigation Act, but in most cases the individual comes to the Combines Branch.

Senator BRUNT: Have there been any prosecutions and acquittals with respect to resale price maintenance since 1953?

Mr. MACDONALD: Yes, there was one in 1955.

The CHAIRMAN: There was one prosecution and a conviction. Was there a prosecution and an acquittal in 1955?

Mr. MACDONALD: There was no prosecution and acquittal in 1955.

Senator KINLEY: What kind of a lawsuit was that? There was no resale price maintenance in 1955, was there?

The CHAIRMAN: Yes, it came into effect in December of 1951.

Senator KINLEY: And when did it go out?

The CHAIRMAN: It is still in.

Senator KINLEY: And section 34 now prohibits resale price maintenance?

The CHAIRMAN: Yes.

Shall section 14 stand?

Hon. SENATORS: Agreed.

Senator MONETTE: It seems to me you raised an important question on that, Mr. Chairman? Isn't this subsection (5) limiting the defence?

The CHAIRMAN: I asked that question and Mr. MacDonald said no.

Senator MONETTE: Has a decision been made on this subsection?

The CHAIRMAN: It is standing, so I do not have to argue it with Mr. MacDonald at the moment.

Senator MONETTE: It is a very serious question.

The CHAIRMAN: I personally am not prepared to answer it one way or the other at the moment, so we are standing it for the time being.

Section 15 is presently in the statute and you have the amendment because of changes in reference.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 16 deals with other offences and it just puts in the heading "Part VI—Other Offences."

Hon. SENATORS: Carried.

The CHAIRMAN: Section 17 deals with the jurisdiction of the courts.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 18 involves only a change in the cross-reference.

Hon. SENATORS: Carried.

The CHAIRMAN: Under section 19 jurisdiction is given to the Exchequer Court, and as far as I am concerned I would like to have the opportunity of discussing this with the minister.

Senator POWER: As I understand it, if a fellow has a bad case and has been terribly crooked—

The CHAIRMAN: You mean he would take it to the Exchequer Court?

Senator POWER: —and he has been robbing the country right and left, he would take his case before a criminal court because it is harder to prove a case against him there, but if he is a good, honest man he would go to the Exchequer Court.

The CHAIRMAN: Well, we will not classify those who will appear in the Exchequer Court and those who will appear in the criminal courts.

Senator POWER: He would probably stand a better chance in the criminal court.

The CHAIRMAN: I would say that the courts of criminal jurisdiction would give full consideration to all the merits in whatever case might come before them.

Senator POWER: You should be a minister. That is a good answer.

The CHAIRMAN: Shall this section stand?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 20 merely involves the changing of the part number.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 21 provides for the repeal of sections 411, 412 and 416 of the Criminal Code.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 22 deals with the effect of re-enactment. This is a section that you usually find in the consolidation of statutes, carrying through the state of the law even though it may occur under a different section or statute. Do you have anything to say with respect to this, Mr. MacDonald?

Mr. MACDONALD: It is to preserve the jurisprudence that has grown up around section 411 of the Criminal Code, which is the section under which most combination cases in recent years have been prosecuted.

The CHAIRMAN: I will tell you I was a little bothered at first that this might be making such a declaration of the state of the law that even the Supreme Court of Canada might not be able to make an independent assessment and would be bound by its previous decisions, but finally after more study I came to the conclusion that the Supreme Court of Canada, notwithstanding the provision of section 22, would not be bound by its previous decisions. Do you share that view with me, Mr. MacDonald?

Mr. MACDONALD: I certainly would share the view that section 22 imposes no disability on the Supreme Court of Canada.

Hon. SENATORS: Carried.

Senator HUGESSEN: You did not put in a similar provision with respect to section 412 of the Criminal Code. Was that necessary?

Mr. MACDONALD: I do not think there was any jurisprudence there.

The CHAIRMAN: That is right. Shall section 22 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 23 is next.

Senator BRUNT: We had that last year.

The CHAIRMAN: Yes, and it is only carrying it forward for a further year.



Hon. SENATORS: Carried.

The CHAIRMAN: Let us check and make sure what we have outstanding. Sections 9, 12, 13, starting at the top of page 7 with subsection (2) and subsection (3), and section 14 stand.

Senator HUGESSEN: Section 14 falls.

The CHAIRMAN: It stands in the way you were saying, in a tottering fashion. And section 19 stands. Those are the sections that we have stood for the purposes of getting the benefit of the views of the minister. The proposal is that we adjourn until 10.30 tomorrow morning at which time we expect the minister will be present.

The committee thereupon adjourned.

---

OTTAWA, Thursday, August 4, 1960

The Standing Committee on Banking and Commerce, to whom was referred Bill C-58, to amend the Combines Investigation Act and the Criminal Code, met this day at 10.45 a.m.

Senator SALTER HAYDEN in the Chair.

The CHAIRMAN: Order, please. The Minister is here to address himself to the sections which we stood yesterday, and I was suggesting to the Minister, and I think he is agreeable, that it would make for better understanding of the explanation. Section 9 of the bill stood yesterday because of its relationship to section 32, and particularly subsections (2), (3), (4) and (5) of section 32. So in the course of discussing the new section 32, and subsections (2), (3), (4) and (5), section 9 will be drawn into it. In the same manner I was suggesting to the Minister that section 12 of the bill stood only because it was tied in to section 19 on account of the extension of jurisdiction to the court. The only other one is section 14.

Senator LEONARD: Section 13 stands in part.

The CHAIRMAN: Yes; I have been calling it section 32.

#### HON. E. D. FULTON, MINISTER, DEPARTMENT OF JUSTICE:

The CHAIRMAN: With the introduction I have given, Mr. Minister, possibly the first one to deal with would be that part of section 13 which includes new section 32 to the act.

Hon. Mr. FULTON: You are concerned with subsections (2), (3), (4) and (5)?

The CHAIRMAN: Yes.

Hon. Mr. FULTON: Mr. MacDonald, the Director of Investigation and Research was here yesterday, and he gave me an outline of the discussion of these subsections, but I must confess that I would be assisted if you would raise with me, if you would be so kind, the questions you have in mind, particularly with regard to subsection (2).

The CHAIRMAN: I think the question in relation to subsection (2) is this, that the subject matters in those various matters in subsection (2) are such that existing individually or collectively as enumerated in that subsection they would not constitute any basis, in any event, and apart from this subsection, for a prosecution or the laying of a charge for an illegal combination, and therefore why in the circumstances is it found necessary to bring them in and state that they will now be available as a matter of defence.

Hon. Mr. FULTON: This arises in part because we did have as one of our objectives the clarification of the combination provisions especially. It was represented to us by spokesmen and people who take part in business and industry that the combines legislation was not sufficiently clear to enable business to know exactly what it could do and could not do, and we were told, for instance, with respect to the matters enumerated in subsection (2) that industry was not prepared to have discussions amongst themselves to work out arrangements under which one of these objectives could be advanced, such as co-operation in research and development, for fear that they would be investigated and prosecuted for having entered into a combination. We pointed out to them that no combine, or industry, had ever been prosecuted when its activities had related exclusively to only one or more of these things or had the results of only achieving one of these things; and therefore I asked them: "What is your concern?" They said, "Well, what you say may be so—no one has ever been prosecuted before for one of these things alone, but we are concerned about the broad sweep of the legislation as it has been developed by the jurisprudence, and we have received advice from our solicitors that we should not enter into one of these arrangements because of the danger attached"; and they told me in very positive terms—they asked me to take their word for it—that they did not enter into discussions even related to one or other of these objects exclusively, for concern about what their position would be under the legislation and for fear of prosecution. So we came to the conclusion, Mr. Chairman, that it would be a desirable thing if, without weakening the effect of the legislation, in so far as harmful combinations are concerned, we could clarify it so as to make clear that arrangements having as their objective one of these matters enumerated in subsection (2) could be entered into, and those objectives advanced without exposing them to the likelihood of prosecution. We said, however, that if we did that we would also have to make it clear that arrangements designed to achieve one of these objectives must not be allowed to spill over or form an umbrella under which they could in fact operate a combination in restraint of trade as defined. So I am quite frank to admit to you that this section is for the purpose of clarification.

I made it clear in the house and elsewhere that I had not put forward this as a section changing the law; it is a section designed to clarify it. I know there is a point of view that says, well, what is the need of going through all this; but I am assured that, for instance, in the field of research there are arrangements that could be made between industries for co-operative measures in research that would benefit the economy but which at the present time are not being made because of the concern that they might somehow or other be caught in the combines legislation, and I thought that if we could clarify the legislation it might be of advantage to the Canadian economy.

The CHAIRMAN: What you have said, certainly applies, Mr. Minister, to the question of uniform standards. I think to some extent there is a holding back in some places of an individual approach to this because of the risk that it might be said that when you achieve uniform standards in an industry you are on the way to achieving uniform prices.

Senator CROLL: Will you explain (g) of subsection (2)?

Hon. Mr. FULTON: Well, while the matters enumerated under (a) to (f) are the ones that emerged most generally in discussions I had, as being the sort of desirable thing they wanted to achieve but didn't yet dare to enter into arrangements about, we felt we were not able to enumerate precisely at this moment all those things which it might be considered desirable to do, but there might well be others, and that if we only enumerated (a) to (f), without such general words as contained in (g), the court might say such and such was not enumerated, it is therefore to be regarded as an offence.

Senator CROLL: On the other hand, it can work the other way too and they say that one of the things we are doing was not enumerated but it is covered by section (g). This is something that is also advanced in view of section (g), which is wide open.

Hon. Mr. FULTON: Yes, but I think the kind of combine you mean to catch is still subject to the operation of the law because of subsection (1) which retains the jurisprudence with regard to combinations in restraint of trade, and subsection (3) which further clarifies it. The latter subsection makes it clear that, notwithstanding that one of these objectives specified or some other objective not specified is the real purpose of the arrangement, if nevertheless, it spills over and has even an incidental effect in undue restriction of trade, quantity or quality, prices, et cetera, it is liable to be prosecuted and convicted. I think that (g) must be read subject to subsection (3).

Senator BRUNT: All of them.

Hon. Mr. FULTON: Yes, all of them are to be read subject to subsection (3). And while you might raise as a defence that your arrangement was directed towards pooling of facilities for research nevertheless if the Crown, as it always must do, establishes that it was a combination in restraint of trade, then that defence would not be applicable.

Senator CROLL: My thought is that (g) permits a spill-over from (a), (b), (c), (d), (e) and (f) and it would be hard and difficult to ascertain just exactly what happens when they go beyond (a), (b), (c), (d), (e) and (f), and (g) is a spill-over and gives them an almost complete defence.

The CHAIRMAN: Oh, no.

Hon. Mr. FULTON: No, because (g) just as much as (a), (b), (c), (d), (e) and (f) is read subject to subsections (1) and (3).

The CHAIRMAN: What occurred to me, Mr. Minister, is that you use the expression of the spill-over and you said as incidental to the doing of something in subsection (2) the enumeration in subsection (3) might be affected. Isn't the proper way of looking at it, if notwithstanding the things that you may do in subsection (2) you should as well do anything which would support a charge under the items enumerated in subsection (3), then the defences in subsection (2) are of no help to you at all, it is not a question of incidentally, and if you have done something which would entitle a charge to be laid under subsection (3) or (1) then you are for it and subsection (2) does not help you at all.

Hon. Mr. FULTON: That is exactly the intention.

The CHAIRMAN: It is the word "incidental" that bothered me.

Senator WALL: Mr. Chairman, may I ask the minister a question?

I recognize the import of the minister's remarks with regard to clarification and not a weakening or changing of the law but I was struck by the statement that there was some criticism or fear about the broad sweep of legislation as developed by jurisprudence and I was wondering whether this particular sphere of legislation is unfair, unjust, or is it desirable and going in the right direction?

Hon. Mr. FULTON: Well, Senator Wall, we told them in the course of these discussions, and made it clear in the bill that we were not going to weaken the per se rule as established by the courts, and that is why we keep the definitions in subsection (1) which do bring in the jurisprudence. We said we are not going to weaken the rule against a combination in restraint of trade which I think is generally known as the per se rule; that will be kept; but within that limit we will see what we can do to clarify the law in regard to those cases where you do not create a combination in restraint of trade.



Senator WALL: In other words the broad sweep of legislation as developed by jurisprudence is now equitable, fair and going in the right direction?

Hon. Mr. FULTON: There is a wide divergence of opinion on that point, depending on who is expressing the point of view.

The CHAIRMAN: I should point out too that there is some volume of opinion that holds if there is going to be legislation defining an offence, if the legislation should be enacted by the courts instead of Parliament that is something entirely different. It well may be that the present state of the law on combinations is a result of legislation by the courts and not by Parliament and possibly Parliament should do the job of legislating.

Hon. Mr. FULTON: We might use, instead of legislation by the court, the word "interpretation" by the court.

The CHAIRMAN: I deliberately used the word "legislating" because I thought it had gone beyond interpretation.

Hon. Mr. FULTON: On that point, while we have retained the jurisprudence under subsection (1) I think one of the side effects of subsection (3) is to state in reasonably clear and concise terms for the guidance of industry what it is that Parliament has indicated arrangements or combinations can not do.

I think subsection (3) is a pretty exhaustive definition or categorization, if you like, of the things which the legislation, as interpreted by the courts, have said constitute combinations in restraint of trade.

The CHAIRMAN: Could we move on to subsection (4).

Senator POWER: I am sure the minister is not sufficiently far removed from his days of opposition to take offence if I do not entirely agree with him. I feel that this section, subsection (2), is going in this direction. Here we have made certain things criminal offences. This is a criminal prosecution, as I understand it, or something like it, and here we are taking trouble to say to a person who might commit this particular crime: "Don't worry if you get close to it"; in other words, "You may not commit the sin but if you get close to the occasions of sin in this matter we will let you get by". You can give him a lot of excuses and means of achieving the sin by these meetings by means of exchange of statistics and so on. In other words, you say to a fellow who commits murder: it is not murder if you only steal the man's shirt; in that case you have not quite committed murder.

I do feel that even after the Minister's explanation this assurance given to people who might be criminals, that they will not be criminals under certain sections, is not very good legislation.

Hon. Mr. FULTON: Well, Senator Power, we are all, I suppose, subject to temptation and, as you say, we must avoid the occasions of sin as much as sin itself. At least, that is what you and I are taught.

Senator POWER: I thought the Minister would understand the theological implications.

Hon. Mr. FULTON: I think the assistance to business might help them to avoid falling into temptation, and assistance to business in resisting temptation is still here. The penalties they know about; they know how the courts have interpreted the act; and we have made it clear, I suggest, that we will now allow them to commit sin but, rather, will give them assistance by outlining the paths down which they may walk without danger. Now that, I think, is not a bad principle to incorporate into legislation. After all, the function of theology is in part to instruct men in what they may do and what they may not do and how to avoid falling into sin or into the occasions of sin. Something along those lines is what we have tried to do here.

Senator METHOT: Is it not a fact that where you provide a remedy you give them an advantage since it is in the interests of industry to bring up their standards?

Hon. Mr. FULTON: I certainly would say, senator, that none of the things defined in subsection (2) are crimes. They are not even stealing the shirt.

The CHAIRMAN: Subsection (2) does not create a through street that takes you through the combines offences. It has a dead end to it and if it opens out into a combination, they are for it.

Senator POWER: Have these things that are enumerated for the combine set-up defences in cases that have come before the court?

Hon. Mr. FULTON: I am told that from time to time defences along the lines of some of these things have been raised and the defence has taken the position that the meetings were for the purpose of one of these things and not for other purposes. The court, on looking at the record, has rejected that view and said, "It is obvious your meetings were designed for other things because they produced other results", and they have rejected the defence on that ground.

Senator POWER: Under this legislation will the courts be forced to accept these as defences?

Hon. Mr. FULTON: Only if the accused can establish that their meetings and arrangements had these effects and these only and did not go beyond them.

Senator POWER: That was the case before this suggestion.

Hon. Mr. FULTON: Quite so.

Senator POWER: So this made no change in the situation?

Hon. Mr. FULTON: That is our view. This is a clarification. But business said to us, "We have had cases where we raised this as a defence and it has not been allowed and we are in doubt whether we can do these things".

I admit they are not really stating the case quite correctly when they say the defence has not been allowed. What has happened is that the courts have said, "Your meetings went beyond this and therefore your defence does not succeed". But business has said, "As a result of these happenings, and because of our general concern and to some extent the advice we get from our solicitors, we are not sure we can do these things at all". We said therefore that we would make it clear provided they did not go beyond these things.

Senator POWER: What do you say to this view? Either this is a weakening of the act or, if it is not, it is of no use. That is the view taken by some of the senators, that it is not of any use because all these excuses could have been alleged and, if shown to be valid, would have voided the prosecution.

Hon. Mr. FULTON: Senator, in that sense it is perhaps correct to say that it does not change the law; it only clarifies it. But I suggest to you respectfully that you cannot say it is of no use simply for that reason. If it is of assistance in encouraging industry to do those things which we believe will be beneficial to the economy, and to encourage them to do those things they are not doing now, like pooling facilities for research, then the legislation is definitely of use in the broader sense, although I admit and agree with you that it does not change the law but merely makes it clearer.

Senator THORVALDSON: In regard to this matter, we have been talking pretty much along the lines of theory and I wonder if I could give a practical example from business in Canada where I believe subsection (2) becomes completely relevant.

I am speaking of an industry which is world-wide. In this case there are two companies in western Canada who manufacture and sell gypsum products—plaster, wallboard, gypsum lath and so on.

These industries have been competing, and competing successfully and fiercely for a period of 30 years. I think I know what I am talking about because I happen to be associated with one of them.

These two industries supply all the gypsum products for western Canada. One is Canada-wide—I will not mention names because there is a reporter present, although he may know who they are.

The company with which I am associated carries on business from Fort William to Vancouver. I may say at the outset I have no doubt we have been under scrutiny by Mr. MacDonald's branch for years, and quite properly. I may say also that the price of our product has increased since 1940 by no more than 10 to 15 per cent, in fact not nearly as much as labour costs have increased; but the price of our product has been increased to take care of horizontal price increases generally in Canada.

These are facts in regard to these industries. We have competed fiercely on the basis of quality and service and so on for some 27 years. My company was organized in 1929 and for 27 years we had one relationship with our competitor and that was the exchange of statistics. We exchanged statistics and no more.

We should have liked to have a definition of products standards although these are world-wide in the gypsum industry. Gypsum rock varies in different parts of the world, and in western Canada it is necessary to have a continuous scientific development in the industry.

We exchanged statistics for 27 years, but three years ago we decided that we would desist because it came too close to trouble, as we called it, when it became apparent that the Combines Act was starting to track down more than they used to up to five or six years ago we continued, but only until three years ago, to exchange statistics.

We believed that was good for the industry but we stopped three years ago because we would not even think of getting so close as to define standard products, notwithstanding that it would have been a good thing for the industry. Credit information would be most useful to us but we would not think of undertaking anything like that under the law as it has been.

It is all very well to say we would not be liable, but it would bring down an investigation which we did not desire. As for definition of trade terms, I suppose we have had a pretty effective definition in the gypsum industry; nevertheless, there it is. But as regards co-operation and research, that could be a tremendous factor for the industry if we thought we were entitled to do it. We ourselves in Winnipeg, Calgary and Vancouver have research organizations, chemists and so on who are continually working only for our company; similarly our competitors have the same problems and they too have organizations throughout Canada. These organizations must exist because of the type of rock used in various mills, which is of a different character. Our plants in Winnipeg, Calgary and Vancouver get their rock from the same place.

In due course, the two industries may be forced into doing something in regard to source of supply because one of the companies—my company—possesses one of the biggest sources of supply of gypsum in the world in the Windemere district in British Columbia.

There have been mild negotiations between our two companies in regard to supplying our competitor with rock. If we did that it would be of tremendous importance and benefit to the industry as a whole from the standpoint of chemical and research organizations.

As regards the restriction of advertising, of course we have never thought of getting close to that, although obviously we could have no institutional advertising so-called. These two companies are the only two in the field. It is easy to say we have done price-fixing, which we have never done. It is easy



to allege that we do, because of necessity we manufacture a standard product, and consequently if our price were 50 per cent below our competitors in any commodity we would be in trouble. It is a standard commodity like sugar.

The CHAIRMAN: What you are saying is that by having this enumeration in subsection (2) you are reinforcing the legal opinion which a lawyer may give to his client that he can do these things and not violate the law.

Senator THORVALDSON: We have not been able to get an opinion that we could do these things.

Senator LEONARD: What your firm needs is eminent counsel.

Senator BRUNT: Where are these eminent counsel?

Senator THORVALDSON: I would say in reply, Senator Leonard, I should like to know where to find counsel who would advise anyone up to now that he could engage in these things without getting into trouble with the combines.

The CHAIRMAN: I agree, but it is well to have a clear statement.

Senator THORVALDSON: I am through. This has been a statement of personal experience.

Senator KINLEY: Speaking from the layman's point of view, I happen to come close to this legislation. So and so calls me up with respect to the exchange of credit information. How far can I go? I say, "What is your opinion? Call up your lawyer. I see it here; it is in the act, we can use it".

Senator LAMBERT: If I may make a suggestion, I think this section could be disposed of now because I do not think there is anything in the details of clause 2 that will make any difference whatsoever in the administration of this legislation for the reason that the institutions or organizations in business are going to meet for any of the purposes designated in these special clauses and if they do there will be other things they will discuss as well, despite what Senator Thorvaldson says.

I have had a little experience myself in such meetings in the past, though it is a long time ago. Mr. MacDonald's predecessor attempted to penetrate some of the mysteries of these meetings and was not able to do so simply because they were protected by such provisions as these.

I think it is all right to enumerate these things, but actually and realistically they will not really make any difference in the actions of Senator Thorvaldson's company—merger, I would call it rather than combine. Where you have competitive companies engaged, for example, in supply food products, where they are competitive, meeting together to try to rationalize their business, and finding every time they meet that they are in violation of the law within 24 hours of the meeting, these details just constitute a pretext for the meeting. I would suggest that we take this for what it is intended to be and go on to the other sections.

The CHAIRMAN: Since this seems to be the morning for confessions, are there any others who wish to confess?

Senator WALL: I am not going to make a confession, but I did pose a question yesterday to Mr. MacDonald and it is in the realm of opinion. I appreciate that. There is a wide body of opinion, some of it legal, to the effect that if the defences listed in subsection (2) are allowed it will be much more difficult to prosecute and find guilty combines or combination situations. I appreciate that is an expression of opinion.

The CHAIRMAN: I think it must have been Senator Wall who gave that opinion.

Senator WALL: I pinpoint a specific case which was discussed in one of the newspapers, for example, and that was the pulp and paper case that had just been completed, and the argument was that the *per se* was being diluted

and that it would have been most difficult, if not impossible to prosecute those companies under the provisions now being brought into the act.

Hon. Mr. FULTON: Senator Wall, is it not a fact they were convicted because it was shown they had a conspiracy with regard to prices? I do not follow the argument of those who say that such a case could not result in a successful prosecution now, for first of all we preserve the jurisprudence and secondly we pinpoint the fact that no arrangement advanced as a defence under subsection (2) can succeed if, in fact, it has resulted in the fixing of prices. So, with due respect to you, Senator Wall, I am not able to follow the argument that the pulpwood prosecution would not have succeeded.

Senator WALL: I am not speaking as a lawyer but as a layman observing this from the sideline.

The CHAIRMAN: Can we move on to subsection (4), dealing with exports? I think I was one who asked that this stand because I wanted some clarification, Mr. Minister. It seems to me when I read subsection (5), which imposes conditions or qualifications on subsection (4) that I must have in the combination for export all those who are ordinarily engaged in such export, otherwise I would fall into trouble under one of these conditions—in this case it would be under paragraph (b)—because I could conceive that most convictions in relation to export could well be for the purpose of settling on a price or economies which would enable them better to compete in world markets, and therefore to have lower prices. The one who remained outside the combination might not have the facility for meeting that price and therefore might be hurt. Under subsection (5) the protection of subsection (4) would be withdrawn if that situation developed. Now, is that intended under that law?

Hon. Mr. FULTON: I think, sir, the court would have to look at the situation which resulted in the damage to the export business of the domestic competitor. If the court found that his business was hurt because there was a movement of prices in the export trade which resulted in the injury to him, then it would automatically follow it was not the arrangement of his competitors which had injured him but that he was injured because of the situation in the export trade which the others had got together to meet. It is only if it could be shown, as I read paragraph (b), that they got together in such a manner as to have a deliberate effect on the export market resulting in driving him out of business that they would come under paragraph (b). Mr. MacDonald suggests the kind of example. If they had made an arrangement with all the importers in another country that those importers would not take anybody else's exports and he was frozen out, then it would be held they had damaged his export trade. But if, as I say, they found an adverse situation in the export markets and they got together to meet it and were successful in doing so themselves whereas he was still suffering from the situation in the export markets, then it could not be held they damaged his export trade.

Senator LAMBERT: I do not see what fair redress you would have in a situation where a manufacturer in Canada had an agency abroad and was doing business on a basis which was not regarded as fairly competitive by a competitor at home. What redress have you got?

Hon. Mr. FULTON: I do not believe there is any redress, and this is not designed to give redress against fair competition. The question I was asked was whether the effect of paragraph (b) would be to automatically involve them in liability because some other person was not a party to their arrangement, and my answer is no, it would not automatically involve them in liability; it would only involve them in liability if it could be shown their arrangement had damaged his export trade.

Senator LAMBERT: I find it very difficult to bring the application of this legislation into export trade of any kind. I find it difficult to understand from the economics point of view how you are going to do it because a Canadian manufacturer engaged in filling the domestic demand, if he has a surplus at all, is also going to export if he can do so at a price that would tend to reduce his operating costs.

Hon. Mr. FULTON: Yes.

Senator LAMBERT: Now, there may be a marked difference in the prices charged in both fields but I do not know how you are going to legislate against that practice.

Hon. Mr. FULTON: We do not intend to.

Senator LAMBERT: I do not believe the matter was cleared up yesterday.

The CHAIRMAN: May I move on to paragraph (c) where you have this situation. Say you have a combination for export of all those engaged in the export business in Canada, and let us assume that in the course of that they make an agreement with certain importers abroad to buy all their requirements from those Canadian exporters. That effectively closes the field for the lifetime of that agreement to any new person coming into the field in Canada for export, and paragraph (c) hits that right on the nose and would withdraw from the exporters the benefit of subsection (4) because paragraph (c) says "has restricted or is likely to restrict any person from entering into the business of export."

Senator LAMBERT: That is the point exactly.

Hon. Mr. FULTON: I suppose, senator, if they had tied up all the overseas importers in an exclusive arrangement, what you say is correct. If, in that way, they monopolized the field entirely so that no one could get into it, then I would agree that the benefit of subsection (4) is withdrawn by the operation of (c) of subsection (5). But I would suggest to you that this is perfectly acceptable, because the object must always be to increase the volume of Canada's export trade. That is why we endeavoured to draw this in such a way that it could not be used to freeze or limit the volume of Canada's export trade.

The CHAIRMAN: But the addition of another exporter who is not then in the field may not increase the volume, because the exporters who are already in the field may as a result of their combination be developing increased quantity of export business, and that is the purpose of it.

Hon. Mr. FULTON: But I do not think we want to go so far as to freeze permanently the pattern or number of people who come into the business, because who can refute the statement that such a freezing would have the effect of limiting the volume of our export trade?

Senator LAMBERT: I think the thing is a misnomer. I cannot see how any exception can be taken to the export trade of any commodity or article produced in this country, because that is the most competitive field imaginable. I can see that manufacturing institutions which are engaging in attempting to broaden their outlook in the export field, are tending to come together more and more closely in the regulation of the domestic market conditions, and to that extent, possibly indirectly, the export activities of those persons might be considered to have some effect under this act on the domestic activities.

Hon. Mr. FULTON: We tried to make it clear, in the drafting, that arrangements entered into for the purpose of facilitating exports must not be allowed to spill over and restrict domestic competition.

But here again, this is partly clarification, although I do not say it is exclusively clarification. Our export industries have represented to us that to meet competitive situations in international trade they must make mutual



arrangements, such as common marketing agencies; and they say that they are fearful that at the present time if they form a common sales outlet or something of that sort they would be liable to prosecution. They say they have to do this sort of thing in order to present a better competitive position and be a stronger competitive force against the cartels with which they must compete, and against the whole weight which is beginning to come to bear from the Soviet economy, which is a state trading organization. They say they do not think they can meet the competition under the present combines legislation—it is not clear. I think they have good reason for saying that.

So we decided that, if we could make clear that such arrangements regarding export trade could be carried on without fear of prosecution, thus encouraging our industries to increase their export drive, this would be a desirable thing to do; if it could be done without opening a door through which they could restrict competition domestically in Canada.

Senator GOUIN: Mr. Chairman, personally I am very much in favour of subsection (4). It is subsection (5) (b), the matter of restraint affecting any domestic competitor, to which I refer. We have, for instance, in Montreal an export trade association. Perhaps we do not go very far from the practical point of view, in any event, but let us say that under this arrangement we export to South America. Suppose one exporter does not want to join the association, though he is perfectly free to do so. In this sense he will suffer a prejudice, though through his own fault. Nonetheless, when I read paragraph (b) I rather think he could lay a complaint, and say "I can't do any business with South America because there is already in existence an association which has monopolized the market." It is really not a monopoly, of course, because everybody can enter the group, but I am afraid it would be open to prosecution.

Hon. Mr. FULTON: I said earlier, senator, that the courts would have to look at the overall situation. They would have to look at what brought the association into existence. If it were established that the association was brought into existence in order to improve Canada's export trade, and to meet a situation from which all were suffering individually up to that time, I do not see how the courts could hold that it was as a result of this association's activities that the man outside was hurt. I would think that the courts would hold that he was hurt by reason of the situation in the export market itself, not by the activities of those who belonged to the association.

Senator LAMBERT: I think that is right. I do not see why the legislation should have anything to do with export trade at all.

Hon. Mr. FULTON: Senator, we were assured by the export industries that they were very much concerned that without some such provision they would not be able to make the arrangements they thought necessary to meet international competition. As you know, there is an investigation going on into an industry in British Columbia, which has given rise to this concern. Again, I do feel that if we can do anything to clarify the position, and thus assist our export industries, it is a good thing to do.

The CHAIRMAN: All I am afraid of, Mr. Minister, is if we get as far as the courts we may get a very substantial cutting down in the benefits that you are seeking to confer by subsection (4), by reason of the diffused nature of the conditions or qualifications that are in subsection (5).

If there is no further discussion on this subsection, may we pass to section 14?

Senator CROLL: May I ask one question of the Minister? The wording bothers me a bit, though perhaps there may be a good reason for it.

Subsection (5) uses the words "conspiracy, combination, agreement or arrangement", then follows (a), (b), (c), (d); and one sees the words "has

lessened or is likely to lessen". Going over to the top of page 8, paragraphs (b) and (c) of section 33A one sees the words "tendency of substantially lessening". Why the difference in phraseology? Is there any meaning attached to it?

Hon. Mr. FULTON: I think I can explain that, Senator Croll. The whole of the new section 32 is dealing with combinations, and the words "likely to" are words of custom, words which have been in the definition of the offence of combination for a good many years; whereas, the other section you cite is one dealing with individual unfair practices, predatory pricing and so on. The word "likely" has not been used in that section; they are not words of custom. Therefore, we thought "tendency" was better.

The CHAIRMAN: Going on to section 14. Mr. Minister, several problems developed in respect of this section. I assume Mr. MacDonald has given you some of the difficulties that were stated here. I think one was that section 14, as it is set up, contemplates a scheme of private law and policing by the manufacturer, rather than having it strictly public law. The second is that this represents a very substantial encroachment on and a whittling away of the prohibition against resale price maintenance.

Hon. Mr. FULTON: Yes. May I deal with one at a time, although to some extent the second one will be covered in what I say with regard to the first. This legislation will be administered and enforced by the same agency and organization that administers it at the present time. If, under the amendment to section 34, supplies are discontinued to a merchant, that merchant will have the same right of making a complaint as he has at the present time if supplies are discontinued. The complaint will be investigated by the same people who presently investigate complaints, and those people, I assure you, will have the same sense of responsibility when this goes into effect as they have now. When anyone says, "I discontinued supplies not because I was trying to establish and maintain a price but because I believed or knew that the merchant was abusing the articles in any one of the ways outlined here", he is going to have to establish good grounds for the conclusion he reached, and he is not going to be able to hoodwink the investigators or the court, sir. Therefore, I say that it is not correct to say this will become a matter of private law. There is nothing to stop a supplier discontinuing supplies now. That might result in a complaint and an investigation. If supplies are discontinued when this amendment goes into effect it can still result in a complaint and an investigation, and the further developments will depend upon the opinion the Combines Branch, and later the courts, form about the matter. If the Restrictive Trade Practices Commission, as the result of an inquiry, comes to the conclusion that supplies were discontinued because of a policy of attempting to control retail prices, it will so report. It is not accurate to say that this amendment takes it out of the realm of public law and puts it into the realm of private law; and I suggest to you for the same reasons it is not correct to say that this represents an encroachment on the prohibition against resale price maintenance.

The CHAIRMAN: Mr. Minister, would you agree that any one of those items, (a), (b), (c) and (d), if urged as a matter of defence now under the law, without this change, would if established be an absolute answer?

Hon. Mr. FULTON: Yes. If he had not tried to induce the merchant to maintain resale prices and had not cut off supplies for that purpose, these defences in my view would exist today.

Senator LEONARD: That might be true of (c) and (d); they might be good defences, Mr. Chairman. But at the present time (a) and (b) would not be a good defence; would they, because they in themselves import a reduction in the price, and therefore if the supplier is saying, "I am cutting off your supplies for that reason", he is endeavouring to maintain his price structure.

Hon. Mr. FULTON: I think a distinction, Senator, can be drawn between the situation which arises when a supplier says you must maintain a set price, on the one hand, and a situation where a supplier says, "I am not asking you to maintain a certain price, but your policy, the practice of loss-leadering in which you are indulging, is damaging other retail outlets which are very important to me, and if continued will result in driving them out of business, and therefore because you are making a practice of loss-leadering I am going to discontinue supplies if you continue. Now, I don't care what particular level of prices you maintain; I am not trying to say you must follow a particular level of prices; that is for you to determine; but you cannot use my goods as loss leaders."

Senator LEONARD: Mr. Minister, obviously before this section comes into effect the accused must have denied that he is specifying a price?

Hon. Mr. FULTON: Yes.

Senator LEONARD: Under section 34?

Hon. Mr. FULTON: Yes.

Senator LEONARD: But he says "I am not setting a price". If at the present time, we will say, he is saying, "I am cutting off his supplies because he is using my articles as loss leaders", without this section 5 going into effect, on a question whether or not he was endeavouring to maintain prices, would not the inference be that he is maintaining prices?

Hon. Mr. FULTON: Well, it is difficult to say what inferences the court would draw on any set of facts in the abstract, but certainly if the merchant's supplies are discontinued, either before or after this goes into effect, and he could produce evidence of conversations and attempts to make him maintain a certain price, then both before and after this goes into effect, the one who discontinues supplies would I think be found guilty of resale price maintenance.

Senator LEONARD: You are saying this makes no change in the law?

Hon. Mr. FULTON: Yes; but I say it clarifies the existing right, if you like, of a person who supplies goods to discontinue those supplies if his goods are being used in any one of these objectionable and harmful ways.

Senator LEONARD: Do you think he would have that right now if he denied, or felt that he had not stipulated a fixed price?

Hon. Mr. FULTON: Yes.

The CHAIRMAN: Section 34, on refusal, says:

(3) No dealer shall refuse to sell or supply an article or commodity to any other person for the reason that such other person

(a) has refused to resell or to offer for resale the article or commodity

(i) at a price specified by the dealer or established by agreement,

(ii) at a price not less than a minimum price specified by the dealer or established by agreement,

(iii) at a markup or discount specified by the dealer or established by agreement,

(iv) at a markup not less than a minimum markup specified by the dealer or established by agreement, or

(v) at a discount not greater than a maximum discount specified by the dealer or established by agreement; or

(b) has resold or offered to resell the article or commodity

(i) at a price less than a price or minimum price specified by the dealer or established by agreement,

(ii) at a markup less than a markup or minimum markup specified by the dealer or established by agreement, or

(iii) at a discount greater than a discount or maximum discount specified by the dealer or established by agreement.



So that there seems to be very substantial emphasis upon not the question of maintaining prices as a generality, but rather of hewing to a specified price, a specified discount, or a minimum price, or a maximum discount.

Senator LEONARD: Does it not amount to a shift being made of the weight of evidence? Supposing there is a conflict as between the dealer who says, "My goods were cut off just because I adopted this practice—all the other retailers receive their goods because they are maintaining a price"; and I say that is the reason that I was cut off. The manufacturer, on the other hand, says, "No, I didn't stipulate the price, but shut him off because of these loss-leader sales." At the present time without this section 5 the court might well believe on all those circumstances, and on the conflicting evidence, that he had been cut off because the manufacturer did not want to maintain a price.

Hon. Mr. FULTON: I think that in general I would agree, Senator, with what you say, and go on to say that this is perhaps a direction to the court as to its assessment of the evidence and the inference it shall draw from that evidence; because it is framed in this way:

"... no inference unfavourable to the person charged shall be drawn from such evidence if he satisfies the court..." that he discontinued, on account of one or other of these things.

Senator LEONARD: And it might be fair to say that in such a situation there is, shall we say, an implied blessing in any event given to loss-leader sales that there is no objection to them from the standpoint of the person charged in the case of refusing to supply goods.

The CHAIRMAN: I think you mean just the reverse, Senator Leonard.

Hon. Mr. FULTON: I think so too, Senator Leonard, if I understand your question correctly. I would have to say, no, we recognize in this situation that the loss-leader practice is undesirable and therefore we say, "no inference unfavourable to the person charged shall be drawn from such evidence if he satisfies the court that he and anyone upon whose report he depended had reasonable cause to believe and did believe (a) that the other person was making a practice of using articles supplied by the person charged as loss-leaders, that is to say, not for the purpose of making a profit thereon but for purposes of advertising."

Senator LEONARD: That means that the manufacturer can hold back the goods for that reason?

Hon. Mr. FULTON: Yes.

Senator MACDONALD: You say that the loss-leader practice is undesirable. Is it undesirable so far as the consumer is concerned?

Hon. Mr. FULTON: In the long run I think it is, because it tends to allow those who are supported by what I call the power of the purse to drive their competitors out of business and then get all the business into their own hands, and I would say that is a disadvantage to the consumer and the economy generally.

Senator MACDONALD: It would have to be done on a very large scale, I would think, in order to drive all competitors out of business.

Hon. Mr. FULTON: Yes, but you could get to the situation where instead of having a reasonable number of retail outlets you would have just two or three large ones competing with each other, which, I think, from the point of view of the economy generally is undesirable.

The CHAIRMAN: Resale price maintenance protected the small retailer against the large volume buyer.

Hon. Mr. FULTON: That is true, Mr. Chairman, but resale price maintenance was felt by Parliament to be an undesirable practice and we are not restoring the opportunity to practise resale price maintenance.

Senator MACDONALD: The only witness that we have heard in this committee, although many of us have read the briefs that were presented to the committee of the other place, was the Consumers League and that is, as you know, a large organization of women from all across Canada, and they were of the opinion that this section of the bill was unfavourable to the consumer. They did not appear to be concerned with the fact that these loss leaders might eventually do harm to them. I gathered from what they said about this section that it would probably result in increasing prices instead of lowering them.

Hon. Mr. FULTON: I am aware, Senator Macdonald, that they expressed that opinion and I suppose I have simply to say that there is divergence of opinion on this point. My recollection of their brief is that they do not go so far as to say that the loss-leadering practice is a desirable practice. I think they said they were not advocating the loss-leader practice, and the MacQuarrie report on the other hand did say quite specifically that the loss-leader practice was an undesirable thing in the sense of its economic effect.

The CHAIRMAN: It made no recommendation though.

Hon. Mr. FULTON: They said it was not desirable to define loss-leadering in such a way as to make it a criminal offence.

Senator HUGESSEN: So far as the evidence given before the Commons committee is concerned, what representatives of the consumers argued that it would be disadvantageous to do away with loss-leadering?

Hon. Mr. FULTON: I think the only ones to make that claim as a direct representative of consumers was the Canadian Association of Consumers.

Senator HUGESSEN: What about the Canadian Federation of Agriculture?

Hon. Mr. FULTON: The Canadian Federation of Agriculture, of course, is composed of farmers, and of course all farmers are consumers but in their association are they not described as an association of producers?

Senator MACDONALD: So are we all in many respects.

The CHAIRMAN: All of us have many divisions.

Senator WALL: Mr. Chairman, I just want to add to the comment about the prevailing opinion given before the Standing Banking and Commerce Committee, and that was the opinion given by the independent economists who by and large condemned this section and did say that it would lead to abolition of the present ban on resale price maintenance. The questions I want to raise are two:

(1) I was very intrigued by the comments the minister made in the house when an amendment was moved to make a legal ban on loss-leader selling, and you will remember that the second section of this resolution gave certain exemptions to anybody who might be accused of loss-leader selling, like end of summer clearance sales and so on. You express an opinion that all this was in the realm of opinion, that it was in effect not subject to measurement, not subject to adjudication, and I respectfully suggest that all these sections (a), (b), (c), (d) are also subject to the same interpretation, that they are all subject to opinions, but the opinion is now going to be exercised by private people, by suppliers.

The CHAIRMAN: It still has to be affirmed by the court.

Hon. Mr. FULTON: Really, what the section is dealing with is a matter of motivation, I think, in the sense that the court is asked to assess whether the motive, whether the intent, with which the supplier withheld supplies, was to maintain resale prices or whether it was one of the reasons specified in the section. You are dealing there with a matter of motivation, and it was made that way because we did recognize that much of this is a matter of opinion. You affirm a judgment and you act on that judgment. What we are concerned with is whether the supplier is only concerned with the protection of his other

outlets and the legitimate interest he has in his goods; if so, the motivation is not wrong; but if the motivation is to maintain resale price maintenance, the motivation is wrong and an offence is committed.

Senator WALL: Might I point out a consequential effect of that? In subsection (2) of section 32 we have provided for certain exemptions that we know to be available and we have provided a basket clause. Now it can be argued that these four exemptions in section 14 (5) (a), (b), (c) and (d), only provide for some reasons which permit or make it logical and desirable, if I might put it that way, for a supplier to cut off supplies. Why then don't we put in an additional basket clause and make it (e) for some other reason not enumerated in section 34 (3)(a) and 34 (3)(b) and give them the kind of protection that we are looking for. I personally submit if we are going to give a good excuse for combinations in section 32 (2) let us make it a really good section 5 and add in a basket clause.

The CHAIRMAN: You do not need a basket clause, Senator Wall. This does not preclude me from raising any other defence which is a good defence.

Senator LAMBERT: Is the crux of the whole thing not that of motivation, and there is only one common denominator for motivation and that is the profit motive. I do not see how any court or any administrative agency in connection with the administration of this act could accurately decide what motivation is in these cases.

Hon. Mr. FULTON: There has to be evidence from which they draw their conclusions or inferences and the evidence would relate to such questions as whether the person whose supplies were discontinued was making a practice of doing these things or whether it was an isolated instance. All these facts would be relevant.

Senator LAMBERT: He is making a practice of it either for his own profit or at his own expense. To my way of thinking there are other elements that could enter into it. Sometimes they are content or prepared to sacrifice for a time with respect to various brands in order to prevail. This idea of motivation, to my mind, is simply based on the point of view of what is profitable to do.

Hon. Mr. FULTON: There are other factors set out here which will have to be established as a basis on which the court can draw its inference. To go back to Senator Wall's question, I think the answer as to why we did not include a basket clause is that you are dealing with an entirely different situation from that which you are dealing with in section 32, and the activities take place in an entirely different context. That is answer No. 1. The second answer would be that here you do not have the safeguards of a provision like subsection (3). Frankly, I do not see how you could draft a subsection of safeguards, as we have in the other section, which would be applicable or capable of insertion into this section in the context in which this section is operating.

Senator WALL: I respectfully submit the safeguards are in section 34(3)(a) and (b) of the act as it is now in force.

Hon. Mr. FULTON: Those are still preserved in all their validity and all we do is go on to say that in dealing with a charge under this section "no inference unfavourable to the accused shall be drawn if". So the present section 34 is there in all its effect.

The CHAIRMAN: Yes. If you were going to have a general basket clause it would have to be something of this kind, "any other defence which may reasonably be raised."

Senator WALL: That is what we are doing in the other section.



The CHAIRMAN: Oh, no. I can do that anyway no matter what they say here.

Hon. Mr. FULTON: It is the contention of those who say this serves no purpose, that it is only for clarification and not for change. I have admitted quite frankly it does not change the law but I do not agree that for that reason only it is of no use. I say it is of use in defining the limits, and it is assisting industry in doing legitimate things.

Senator McLEAN: Mr. Minister, from my experience with the retail trade I can foresee great difficulty with this loss-leader legislation. Perhaps you could enlighten me with respect to this. I have in mind bargain-basement facilities all over the country. No matter whose brand is on the merchandise if it is going to go out of style the stores know this fact three or four months before the general public knows it. I have seen ladies' shoes that normally sell for \$6.00 or \$7.00 being sold for \$2.00, and ladies' dresses which normally sell for \$50 selling for \$10. They are all branded by well-known manufacturers. Stores do not want to get the name of selling old styles. It is true they do not advertise that the merchandise is going out of style but they slaughter them in their bargain-basement sales. This goes on all over the country. Another point is that the overhead is not the same in various businesses. For instance, in one store a man and his wife and perhaps his daughter might carry on the whole operation. So they can sell more cheaply than a store that has a big overhead.

Hon. Mr. FULTON: There is nothing here that will stop that.

Senator McLEAN: They can cut prices. There may be a fixed price with respect to certain commodities but they can still sell them lower.

Hon. Mr. FULTON: There is nothing here that will inhibit that at all.

Senator McLEAN: It might be classed as a loss-leader.

Hon. Mr. FULTON: No. If you read the section it says "that is to say, not for the purpose of making a profit thereon but for purposes of advertising;" If therefore, store A can sell lower than store B and make a profit no one who discontinued supplies could take advantage of this section.

Senator McLEAN: They certainly do not make any profit on the merchandise that is going out of style.

The CHAIRMAN: You are not selling it as a loss-leader but to cut your loss.

Senator McLEAN: Then there is the case of the smaller merchant who has a bank credit and is very concerned about keeping that bank credit good. If he has certain obligations to meet at the bank he will slaughter his goods to meet that obligation. He will do that time and again in order to keep his credit good. That is done right along. I know this because I was a bank clerk at one time. The merchant wants to keep his credit good at the bank because he operates from the bank so he wants to meet his obligations there and he will slaughter his goods at a low price.

Hon. Mr. FULTON: I suggest, in answer to most of what you say, that none of the sales practices you have outlined would be in any way inhibited by our amendment to section 34. We drew it in that way so it would not give a supplier an opportunity to cut off supplies simply because somebody had a genuine clearance sale. We recognize that clearance sales must be held, and that they are of advantage both to the retailer and to the consumer. I suggest to you that there is nothing in our amendment that will inhibit that kind of genuine clearance sale.

Senator CRERAR: There is a good deal of uneasiness with respect to section 14 in that it will make it more difficult to get convictions for violation of the law. Would you care to comment on that?

Hon. Mr. FULTON: I must repeat something I said at the beginning of the discussion with respect to this section, that the law will be enforced by the same agency, with respect to inquiries, and in the same courts, with respect to prosecutions, after this goes into effect as enforce it now.

And if a complaint is made by someone whose supplies have been discontinued, then the investigation takes place under the Director. The person who cut off the supplies is going to have to satisfy the Director that he did so for one of the reasons specified in section 34 and not for the purpose of maintaining prices. The Director will bring the same acumen, judgment and vigorous enforcement to bear on those questions as he does now on any other question.

I think you also have to bear in mind the fact that this does not, in my view, change the law. This is only a clarification: it makes clear the rights that now exist to suppliers to discontinue supplies for any of these reasons.

Senator CRERAR: I am thinking of any violation of the law: the Director plays his part, and it finally gets into the court; the judge is trying the case, the counsel are arguing. The defendant can take advantage of any of these provisions, (a), (b), (c), (d) of section 14. I can see where it is going to be a great field day for the lawyers.

Hon. Mr. FULTON: I have heard it suggested that combines legislation is a tremendous field day for lawyers, in any event.

Senator CRERAR: Quite frankly, that is the fear I have of section 14. I think the weakening of the law and the providing of additional loop-holes of escape is unsound.

The CHAIRMAN: Gentlemen, the Minister is required in the other house at this time. Is it agreeable to adjourn now and resume at 1.30?

Hon. SENATORS: Agreed:

At 12.05, the committee adjourned until 1.30 p.m.

The committee resumed at 1.30 p.m.

The CHAIRMAN: Order, please. The committee shall resume with consideration of this bill. We had just about finished our dealing with section 14. There was one question that I wanted to ask the Minister, and that was with regard to a situation I referred to in the Senate. It appeared to me on my reading of section 14 that the loss-leader provisions were only applicable in the case of the direct sale by the manufacturer to the retailer, and it was in that connotation that section 14 might be applied. Now, in a very great many cases, of course, there is a middleman, the wholesaler, and the question that concerned me was that if a manufacturer sold to a wholesaler, and the wholesaler then sold to the retailer, and the retailer engaged in these loss-leader practices, how did I as the manufacturer get at the retailer; or is there something in the section which would permit me to refuse to continue selling to the wholesaler because of the way the retailer was behaving? What have you to say about that, Mr. Minister?

Hon. Mr. FULTON: Well, I think this is, at least in part, if not completely, covered by the introductory words of the new subsection. You will notice it is drawn in this way:

"Where, in a prosecution under this section, it is proved that the person charged refused or counselled the refusal to sell or supply an article to any other person, . . ."

Now, the reason for the word "counselled" is so that the manufacturer can ask his wholesaler, counsel his wholesaler, to stop supplying those goods to the retailer in question.

The CHAIRMAN: Yes, I can see it that far, but if you continue with the reading of the rest of it, it says:

“ . . . no inference unfavourable to the person charged shall be drawn from such evidence if he satisfies the court . . .

(a) that the other person was making a practice of using articles supplied by the person charged as loss-leaders, . . .”

Now, that would not be the situation where I sold to the wholesaler and the wholesaler sold to the retailer.

Hon. Mr. FULTON: No; but we didn't think we should give a right—I am not speaking in legal terms here—to the manufacturer to cut off his wholesaler if the wholesaler refused to supply the retailer who was engaging in any of these practices. That did seem to us to be getting close, if not right back, to the system of resale price maintenance; and we did not think the manufacturer should have the right to cut off his wholesaler, who after all is the person upon whom the manufacturer relies as the outlet of his goods; and if the wholesaler has the matter drawn to his attention—that there is a merchant indulging in some of these practices—but does nothing about it, and decides to go on supplying, we were not certain it was healthy or desirable to give the manufacturer the right then to say, “I will cut you off because you haven't cut off so-and-so”.

The CHAIRMAN: In those circumstances, then the manufacturer might say to the wholesaler, “Well, now, if you don't exercise greater care in the people you sell to I am going to cut off your supply, because here is a man practising this loss-leader business, and if you don't show greater care and undertake not to sell, that is what I shall do.”

Hon. Mr. FULTON: Yes, he could say that, and he could say that at the present time, too.

The CHAIRMAN: And that does not come within the prohibition at all in the statute on resale price maintenance.

Hon. Mr. FULTON: I think the point you have just made is certainly arguable. I have not examined it lately, but I would say so.

Senator HUGESSEN: After all, this has reference to the wholesaler. There is no basic crime set out in subsection (3) about counselling somebody to refuse to supply goods to a retailer.

The CHAIRMAN: It has no peg to hang on.

Senator HUGESSEN: It has no peg to hang on.

Hon. Mr. FULTON: I am afraid I have not appreciated your point, Senator.

Senator HUGESSEN: I was suggesting that under subsection (3) of the present act the only person who can be charged with a crime under subsection (3) is the person who actually refused to supply the goods to the retailer because the retailer will not resell the goods at a certain price, and that the person in that case is the wholesaler. Now, how can you bring in the manufacturer, when the only crime you can bring is against the man who refused to deliver the goods to the retailer. There is no crime of counselling.

The CHAIRMAN: Except in subsection (3) of section 34 under the present act. The word “retailer” does not occur, and I suppose if you used the words “manufacturer and wholesaler”, subsection (3) might read in that connotation.

Senator HUGESSEN: Oh, it might apply to the wholesaler, but not as between the manufacturer and the retailer.

The CHAIRMAN: But the manufacturer is the one who would have to say to his wholesaler, “If the retailer is misbehaving, and you won't do something, then I am going to discontinue supplying you with goods.” And I say in those circumstances that defence is open to me even under the present law.



Hon. Mr. FULTON: But Mr. MacDonald reminds me that a manufacturer might be charged with aiding and abetting in resale price maintenance, because he counselled the wholesaler to refuse supplies.

The CHAIRMAN: Aiding and abetting is a section in the Criminal Code.

Senator HUGESSEN: Yes, but you are taking away the Criminal Code.

Hon. Mr. FULTON: We are putting all the offences in here.

The CHAIRMAN: But there is a general agency section in the Criminal Code.

Hon. Mr. FULTON: I still think he could be charged with aiding and abetting under the Criminal Code. Section 34 was never in the Criminal Code.

The CHAIRMAN: I remember having gone into that several years ago, Senator Hugessen, in the Narcotics Act, as to whether or not you could charge under the aiding and abetting section, and the conclusion was that you could.

Hon. Mr. FULTON: I think it is established that it is a section of general application.

The CHAIRMAN: Of course, we are not getting into legal argument here, but aiding and abetting by counselling is not a case of counselling. If I say to the wholesaler earlier, "This retailer is misbehaving, you have a right to cut off his supply in those circumstances, and if you don't do it, I am not going to supply you", that is not counselling to do anything, that is telling him.

Hon. Mr. FULTON: But it might be a case that he does not go that far but urges the wholesaler to discontinue supply.

The CHAIRMAN: Then he needs a different lawyer.

Hon. Mr. FULTON: No, I think this is an act of technical application, and we anticipate there will not be any punitive action resorted to immediately, that the manufacturer to whose attention these complaints are drawn will go to the wholesaler and say, "Look, I am having complaints from retailers that he is indulging in loss-leadering, I suggest you look into it yourself, and if he is actually doing it, then cut him off, or go and see if he will stop loss-leadering first, and if not, let him know." I do not see that sort of thing going into operation on the first breath of suspicion; there would be discussions, and those discussions might be said to take the form of counselling.

Senator GOUIN: Mr. Chairman, the defence is limited in that case when you refuse to continue supplies to the other person who has made a practice of having these loss-leader items, and it does not seem to apply to a wholesaler who operates with his regular prices when selling to the retailer, and then the manufacturer cannot exercise against the wholesaler any action for refusal to supply any more goods. He may counsel him and so on but you do not get very far that way.

The CHAIRMAN: In the relationship between the manufacturer and the wholesaler there would not be any question of price involved. The wholesaler would not be indulging in any loss-leader practices so I don't see how there can be a basis for prosecution unless the manufacturer got himself into the position of actually counselling the wholesaler to cut off supplies.

Hon. Mr. FULTON: That is it, Mr. Chairman.

The CHAIRMAN: That is exactly the thing I do not like, and if the manufacturer is deprived of that right, then I say if the principle is a sound principle then it should be applied to all situations in which loss-leader selling may occur, not only to the situation where the direct relationship is between the manufacturer and the retailer.

Hon. Mr. FULTON: I think it does, because this section is broad enough to include the case where a wholesaler cuts off supplies when the retailer is earning no profit but he does it for one of these purposes.

The CHAIRMAN: If the wholesaler does not do it then the manufacturer may act in place of the wholesaler. I have thought that a manufacturer was justified in doing that but I got a little disturbed when Mr. MacDonald volunteered the information of counselling the wholesaler to cut off, and then taking this action which might involve him in some kind of charge for which this defence would not be available.

Hon. Mr. FULTON: I suggest it would be available. The defence is available to the person charged, whether he be a wholesaler who has actually cut off his supplies or a manufacturer who is charged with aiding and abetting on the basis that he counselled the other person.

The CHAIRMAN: If the wholesaler intervenes then the manufacturer is not the one who cut off the supplies.

Senator BRUNT: Surely these four defences outlined here are available to anyone.

Hon. Mr. FULTON: That is my view, Senator Brunt. This is a tricky little problem that you are discussing here and we are of the view that we drafted it so it would cover the whole chain.

The CHAIRMAN: If that is your statement, Mr. Minister, of the intention of the legislation then I am prepared to accept it because I know if in practice it should be proved unwise then you will do the necessary thing to correct it.

Hon. Mr. FULTON: We will have to, yes.

Senator MACDONALD: Mr. Chairman, on clause 14, which will be section 34 of the act, subsection (5) and in paragraph (a) I read, "That is to say, not for the purpose of making a profit", and further down, in line 35 I read the words, "not for the purpose of selling such article at a profit." Now suppose a man normally makes a profit of 15 per cent and he decides to reduce the price of these goods and he gets just a profit of 5 per cent and uses the other 10 per cent for advertising.

Senator BRUNT: How can he use it for advertising if he has not got it?

Senator MACDONALD: All right, he writes it off as advertising expense. What about that?

Hon. Mr. FULTON: I think the court will have to look at the circumstances of the particular case, Senator Macdonald, and find out first if he was making a practice of doing this and if the intent with which he did it was not to make a profit but for advertising.

Senator MACDONALD: He is not making a profit, at least not as large a profit as he does on some other goods, but he is still making a considerable profit.

Hon. Mr. FULTON: One would have to have the facts of a particular case before him and know all the circumstances; otherwise my answer is one to a hypothetical question, which is dangerous. Actually the court will have to look at that situation and see if he is making a profit. This is probably not the sort of thing the section was intended to establish as a defence.

Senator MACDONALD: I suppose in order to get around the section you should always be sure to make some profit.

The CHAIRMAN: It would help.

Senator THORVALDSON: That is not necessarily so, Senator Macdonald. It might be the situation where you have a bargain basement and this act is not intended to deal with anything like that.

Senator MACDONALD: A bargain basement is where they sell their goods at a loss, but in this case they do not sell their goods at a loss. Instead of making a profit of 15 per cent let us say they are making a profit of only  $7\frac{1}{2}$  per cent.

Senator BRUNT: I think that would all be covered by a knowledge of the facts of each case. Something might turn on it if you were to reduce one particular item, say all Westinghouse products, reducing the profit you make on them to 5 per cent, while on all the others you make your ordinary profit.

Senator MACDONALD: He may have decided just to sell irons for a month at a 5 per cent profit.

Senator BRUNT: I think the facts of each case will have to be looked into.

Hon. Mr. FULTON: Wouldn't the court have to look at his ordinary cost of doing business and his average profit, and any facts peculiar to the article in question and then decide whether he charged some other price not for the purpose of making a profit but for the purpose of advertising. The court would have to take into account all these factors and decide what is his purpose and if he made a practice of doing this.

The CHAIRMAN: His motive would be very important because on the question if he sold at a lower price there is no question about his chief reason which was, I assume, to attract business. Then it becomes so important to know his motive. If he is in credit difficulties that is a complete answer; if he is at the tail end of a line, that is a complete answer; if he is going to discontinue a certain line that is a complete answer.

Hon. Mr. FULTON: We do have to have confidence in the courts to approach these problems with common sense. I do believe they will be able to isolate a case where it was the deliberate purpose of loss-leading from a case where it was a course followed generally because of economic circumstances in which he found himself.

Senator MACDONALD: There is no loss there, he reduced his profit, he loses nothing, because he is still making a profit of  $7\frac{1}{2}$  per cent and there is no loss.

Senator BRUNT: Do you mean gross profit or net?

Senator MACDONALD: Well, I will take either one. If he was making a net profit of 15 per cent and decided to reduce the article to give him a profit of  $7\frac{1}{2}$  per cent, he is still making a substantial profit.

Senator THORVALDSON: I suggest, Mr. Chairman, we have all forgotten to read what comes after the word "profit". In (a) there appears the words "not for the purpose of making a profit", which is not a complete phrase in itself. You have to read what comes after that, "but for the purposes of advertising". There is a positive statement, which indicates the loss-leader nature of the transaction. Similarly in (b), "selling such articles at a profit but for the purpose of attracting customers." That seems to explain it.

The CHAIRMAN: What that means is that you are giving up something in price in order to get something in advertising.

Hon. Mr. FULTON: Would not the court ask itself such questions as these: Would this man have bothered to handle this line of goods at this price, if his motive was making a profit on it? Would he have not discontinued it? Was he, therefore, handling it not for the purpose of making a profit, but as a loss-leader?

Senator HUGESSEN: But, Mr. Minister, why should you be concerned with a retailer not making a profit on all his merchandise? Why should not a retailer sell some of his goods at a loss in order to attract business? Why would you interfere with him, and why would you deprive the consumer of the benefits that would accrue to him?



Hon. Mr. FULTON: Because we are concerned with the prevalence of loss-leaders and their effect on other merchants. It is a practice that can be indulged in by those who have lots of money behind them and who can afford to absorb these losses. The concern is that it is being used in such a way as to drive other people out of business, not by ordinary competition, such as increased efficiency and things of that sort, but by deliberate action and taking a loss, which the other person cannot afford to take.

The CHAIRMAN: Let us not forget the answer we got this morning in this context. We are now discussing loss-leader as though this was something new that was being introduced and creating substantive rights in the law. The answer we got this morning, that the situations created by loss-leader selling could be dealt with by action of the manufacturer without the aid of a section such as section 14; and that really what section 14 contributes is to put it in tangible form, or to outline directions to a magistrate or judge in a more concise way.

Hon. Mr. FULTON: That is correct.

Senator WALL: Mr. Chairman, section 14(a) says "as loss-leaders"—and then it defines loss-leaders—"that is to say, not for the purpose of making a profit". And then (b) says, "of selling such articles at a profit". And then they both end up, not for the purpose of advertising them at all, but for the purpose of attracting customers.

Now, what is the specific difference between those two? I think they are one and the same thing.

Hon. Mr. FULTON: There is a slight difference, and I think it is an important one, Senator Wall.

In (a) we contemplate the practice generally known as loss-leader selling, where a man will consistently stock and sell a certain line of goods below cost in order to advertise his store as such. The other is where he advertises a certain article that has a big consumer attraction. These cases have been specifically reported to us—of people who go into a store and say "We want to buy this article at \$9.99 cents, which you advertised." The store man says, "We haven't any more of those, but we have over here something else which is really much better." On investigation it has been found that the store, deliberately, had only one or two of that article, so it could not be charged with false advertising. The one or two articles were sold at once. This was a deliberate action on the part of the stores so that it could direct the customer's attention to something else the store wanted to sell. In other words, they got people in, not on a basis on which you could charge them with false pretences, but they really got them under false pretences intending to sell something else.

Senator WALL: I still fail to see the difference between advertising and attracting customers.

Hon. Mr. FULTON: Attracting customers for the purpose of selling them other articles, other than those advertised.

Senator WALL: Very well.

The CHAIRMAN: Shall we pass on to section 19, the Exchequer Court section? May I state the point very briefly, Mr. Minister?

Section 92 of the B.N.A. Act gives the provinces the exclusive jurisdiction to constitute criminal courts. Section 101 of the B.N.A. Act provides that notwithstanding anything else in the act, the federal authority may constitute additional courts for the better administration of justice. Therefore, it seems to me that the only constitutional basis for extending criminal jurisdiction to the Exchequer Court must be that it is for the better administration of justice.

Before I say anything more, could address yourself to that point, to illustrate how you feel that it is for the better administration of justice?

Hon. Mr. FULTON: I think the reasons could be summarized as follows: In taking cases to the Exchequer Court you will be able to build up a body of jurists who become skilled in this field of assessing issues which are largely economic. Secondly, you will get a more expeditious settlement of the issue involved, in that you go directly to the Exchequer Court, and you have only one appeal from that court to the Supreme Court of Canada. Whereas, if you go first to the trial court, you have three separate hearings: the trial court, the court of appeal, and the Supreme Court of Canada.

I recognize that some question may well arise from the fact that a prosecution leading to conviction can only be taken to the Exchequer Court with the consent of the parties.

That is quite true, but when we were considering the matter in the course of preparing the bill, we felt the amendment would still come within section 101, and would result in better administration of justice, because, although it is true the parties have to consent, we do anticipate there will be cases in which the parties consent to go to the Exchequer Court, and that will result, for the reasons mentioned, in better administration of justice.

The CHAIRMAN: But we have in that court judges—and I am not being critical of the court—who may not be experienced in the administration of criminal law. Their work has been confined to cases between the subject and the Crown, relating to patents, trademarks, arbitrations and so on.

Senator BRUNT: But they are able judges and intelligent men.

Hon. Mr. FULTON: They have all practised as lawyers before they were appointed as judges, and many have had experience, I think one may assume, with respect to the criminal courts. In addition, I would say, in dealing with the kind of case that comes before them—patents, copyrights, trademarks, income tax, expropriations—they are dealing in many instances with, I do not say similar issues, but issues of a nature which generically arise from the same type of problems as some of those involving combinations.

The CHAIRMAN: There are several answers to that. First of all, I am not prepared to accept the statement there has been poor administration in the superior courts of criminal jurisdiction.

Hon. Mr. FULTON: I am not suggesting that.

The CHAIRMAN: Secondly, if it is a matter of selecting certain judges who have handled criminal prosecutions in the combines field, we have such judges in the superior criminal courts in Ontario. For instance, when you set up an additional court in Ontario, such as the Bankruptcy Court, you did not give additional jurisdiction to the Exchequer Court.

What was done was to create an additional court called a Bankruptcy Court and designate a judge of the Supreme Court of Ontario as the bankruptcy judge. When an Admiralty Court was set up you did not put the admiralty jurisdiction in the Exchequer Court but you created one of the judges of the Supreme Court as the admiralty judge.

Hon. Mr. FULTON: We are not saying for a moment there has been poor administration in the trial courts in the provinces but we do say that the trial courts in the provinces have very heavy lists and that combine cases are by their very nature long, complicated and involved. Sometimes there is difficulty in the first place in getting a case on the list—not always but sometimes—and when you do get it on you are taking a judge, if I may use the vernacular, out of circulation for what may be not just weeks but months.

The CHAIRMAN: The same thing would happen in the Exchequer Court. You have fewer judges with such a heavy program of work they have difficulty in keeping up with it.

Hon. Mr. FULTON: I am not giving away any secrets when I say that some feel the number of judges in the Exchequer Court should be increased anyway, and if we find that this imposes a volume of work on the Exchequer Court that cannot be handled with their present number, then we shall have to face the problem of increasing the number of judges. I do not make these statements categorically, for it is on the basis of the experience we acquire that we will be able to assess the best way of solving any problem that arises. But I do not think the amendment will create any insuperable problems and I feel quite sincerely there are great advantages in conferring this jurisdiction on the Exchequer Court, particularly when you are not precluding these cases from going to the trial courts.

The CHAIRMAN: The only advantage that is important in law is the better administration of justice.

Hon. Mr. FULTON: As you know, Mr. Chairman, there have been complaints that these cases take far too long from the time of the first investigation until the time of the final disposition. This is only one step, it is true, but I think it is an important step in speeding up the final disposition of combines cases.

Senator MONETTE: Should we not see a distinction between the words "the Administration of Justice in the Province, . . ." as contained in paragraph 14 of section 92 of the B.N.A. Act, and the words ". . . for the better Administration of the Laws of Canada"? If there is a distinction could we have your opinion as to what it means?

Hon. Mr. FULTON: We have the authority and power—

Senator MONETTE: What I have in mind is that if there is a distinction it might be that section 101 of the B.N.A. Act does not come in conflict with paragraph 14 of section 92 of the same act.

Hon. Mr. FULTON: I certainly would agree with that point of view but perhaps I should confine my answer specifically to saying we have no doubt in our minds that we have the authority and legislative jurisdiction under section 101 of the B.N.A. Act to confer this jurisdiction on the Exchequer Court.

Senator MONETTE: It seems to me that the jurisdiction under section 101 is ". . . for the better Administration of the Laws of Canada."

Hon. Mr. FULTON: Yes.

Senator MONETTE: It creates courts for the administration of the laws of Canada, and exclusive jurisdiction is given to the provinces under paragraph 14 of section 92 of the B.N.A. Act, not for the administration of the laws of Canada but more especially for the administration of justice. If there is a difference I should say that section 101 does not make an exception to paragraph 14 of section 92 and it should be respected as it exists.

Hon. Mr. FULTON: That is my view. There is no conflict in what we are doing with paragraph 14 of section 92.

The CHAIRMAN: But, Mr. Minister, that bypasses the point entirely.

Hon. Mr. FULTON: I did not intend to do so.

The CHAIRMAN: The point is a very simple one. Senator Monette knows that section 92 of the B.N.A. Act gives exclusive authority to provincial Parliaments to constitute courts of criminal jurisdiction. Now, the federal authority has not the right, except for section 101, to create a court of criminal jurisdiction, and the way it gets it under section 101 is that the section starts off by saying, "The Parliament of Canada may, notwithstanding anything in



this act, . . ." So it is bringing back to the federal authority a right to set up an additional court, not a court but an additional court, for the better administration.

Senator MONETTE: Of the laws of Canada.

The CHAIRMAN: Yes. The word "better" must have some connotation.

Senator MONETTE: That is why I say that perhaps it does not make an exception to paragraph 14 of section 92, which is for the better administration of justice; but to my mind there is a distinction between law and justice.

The CHAIRMAN: I have heard people say that.

Senator MONETTE: Law is the fundamental upon which justice should be founded.

Hon. Mr. FULTON: The way this struck me is that we would not have the right to set up courts for the administration of justice in the provinces, but we do have the right to confer upon a federal court jurisdiction for the better administration of the laws of Canada. That is precisely in my view what I have done here.

The CHAIRMAN: What I am saying is that you have to rationalize the word "better" and give it some meaning. It is for the better administration of the laws of Canada.

Hon. Mr. FULTON: I said in answer to your earlier question that I do not think there is any implied criticism of the way in which the provincial trial courts have handled these cases, but there is a recognition that the lists of the provincial trial courts are heavy and considerable time is involved in going to the trial court, the appeal court and then the Supreme Court of Canada. You are not only adding an extra burden for the trial courts, but there is the time involved in bringing finality to the issue. So I think we are providing for the better administration of the laws of Canada here.

The CHAIRMAN: On the assumption that extra facilities provide for better justice?

Senator CROLL: Well, don't they?

Senator BRUNT: Isn't that logical?

The CHAIRMAN: That is exactly what I said.

Senator BRUNT: We are all agreed on it then.

Senator CROLL: You put it in the form of a question and we just want to agree.

The CHAIRMAN: That is fine.

Hon. Mr. FULTON: I never quarrel with the Chairman.

Senator WALL: Mr. Chairman, we stood subsections (1) and (2) of section 31 on page 5. I addressed a question to Mr. MacDonald about the reason for including the change in line 24 by adding the words "has done". I ask that question in conjunction with section 17(4) which provides that where in any case subsection (2) of section 31 is applicable, the Attorney General of Canada may in his discretion institute so and so. If an offence has been committed, why is discretionary power given by section 17(4) to proceed by way of information, if the offence has been committed and the offence has been proved, because up to now the offence is about to do or is likely to do. Now a significant change is being made.

Hon. Mr. FULTON: Under the Criminal Code there is no restriction on the length of time after an offence has been committed within which you must start prosecution. This is a law of criminal nature and therefore the same principles, it seems to me, apply. This means that we have authority now, and we are retaining by our amendments the authority to deal with past offences. We are making no change there, but it has been brought to our

attention that there have been questions raised as to the equity of prosecuting people for an offence which might have been committed many years ago under circumstances, for instance, where what was done involved a fine point of business judgment. Perhaps the facts, did not become evident, or it did not come to our attention, for some years after the event. Now, being responsible for administering the law, if it comes to our knowledge that there has been an offence, we cannot overlook it. A Minister of Justice just cannot overlook it. We felt under those circumstances it was equitable to make the change so that we were not confined to the necessity of a prosecution leading to conviction for something perhaps that might have been done years ago. So we provided the alternative that at the discretion of the Attorney General these actions dealing with past offences may be by way of prosecution or by way of information asking for an injunction or a dissolution order; otherwise we would only—

Senator CROLL: I have one final question to ask.

Hon. Mr. FULTON: I should not leave it only on the time basis, Senator Croll, but also on the nature of the offence, the kind of offence that might have involved purely a matter of judgment with no anti-social intent whatsoever, but nevertheless it becomes clear that actually an offence, perhaps a technical offence, has been committed.

Senator CROLL: I do not question your answer in that respect. In listening to you, and I don't think I was wrong, I think you said that section 14 does not change the law.

Hon. Mr. FULTON: Oh, I am sorry, Senator Croll, then I was speaking too hurriedly. I meant that we are not making any change, taking to ourselves any new authority to commence proceedings with respect to past offences. We are not changing the law in that respect.

The CHAIRMAN: I think you are speaking about two different things. Section 14 is the loss-leader section.

Hon. Mr. FULTON: I beg your pardon.

Senator CROLL: I understood you to say that section 14 made no change in the law. Now, as I understand it the purpose of section 14 as expressed originally somewhere in your speech, was to assist the small businessman, in its new form, that that was your purpose in bringing this present section 14 into the act?

Hon. Mr. FULTON: Yes.

Senator CROLL: No, if it does not change the law, then how can you help the small businessman, and what is the purpose of that?

Hon. Mr. FULTON: Because in my view it makes it clear to manufacturers and/or wholesalers the things that they can do without being guilty of an offence against the provision outlawing resale price maintenance—those things they can do now, if they do them for the reasons specified in section 14.

Senator CROLL: Then in some way you relate it to subsection (2) of section 32 where you also specify that portion of the combines. Then in effect what section 14 and (2) do is to lay out defences?

Hon. Mr. FULTON: It makes clear that these defences can be raised and that they exist.

Senator CROLL: Well, Mr. Minister, is it the purpose of legislation to provide defences? Do we make legislation to provide defences at the same time?

Hon. Mr. FULTON: I should have done more research, but we were able to turn up one section of the Criminal Code without any trouble which makes it clear that there are certain lines of conduct which if confined within those

limits do not constitute an offence. That is established, proper criminal code drafting, I think, and we are following the same principle here and making it clear that if the conduct and motivation went no further than outlined in new section 14, then those will be defences to a charge embraced in the overall section 34. That is not a new practice in drafting a criminal or quasi-criminal section.

Senator CHOQUETTE: That is also set out in the Criminal Code with regard to contraceptives. It says, "Providing that it has not been done for the public good", and there are a number of other provisos.

Hon. Mr. FULTON: I think one of the defences in the Criminal Code that I turned up was on blasphemous libel, and that is a pretty serious offence, but there it contained a subsection saying that it is not an offence if the words were uttered for certain purposes or within certain limits. We say in effect that it is not an offence if the supplies were discontinued on certain grounds, and certain grounds only.

Senator CROLL: Do you not think that as a result of these twin clarifications, as you described them, and I do not quarrel with your language, that any one who has a complaint would be less likely to make it because of these exemptions or these clarifications?

Hon. Mr. FULTON: I should think, Senator Croll, he would be only less likely to if he knew in fact he had been using the goods in one of the ways described in clause 14, but if he had not, he would go right ahead, I am convinced, and make his complaints, notwithstanding the way he had been using the goods.

The CHAIRMAN: Have we finished with the minister? He has to get back to the house. Thank you very much, Mr. Minister, we appreciate your help.

Hon. Mr. FULTON: Mr. Chairman and honourable senators, I am grateful to you for the opportunity of coming and discussing this with you, and for your generous treatment of myself and Mr. MacDonald.

The CHAIRMAN: Now we have the sections we stood, and we heard the minister in relation to them. If I might make a suggestion, there are a couple of sections we stood because they were tied in with what were the chief ones, and the chief ones I think would be (2), (3), (4) and (5) on page 7, of the new section 32, and would also be sections 14 and 19. The others fall into place when you deal with these. I suggest possibly we address ourselves to subsections (2) to (5) inclusive on page 7, of the new proposed section 32. Now, on subsection (2) you have heard the minister. Shall subsection (2) carry?

Senator POWER: I move that it be struck out.

The CHAIRMAN: You have a motion to strike out subsection 2 where it occurs on page 7 of the bill, part of the new proposed section 32. Are you ready for the question?

Senator HUGESSEN: Should that not logically apply to subsections (2) and (3)?

The CHAIRMAN: I think it should be to strike out subsections (2) and (3) where they occur on page 7, being part of the new proposed section 32 of the act. Are you ready for the question?

Hon. SENATORS: Question.

The CHAIRMAN: Those in favour of striking out subsections (2) and (3) will please raise their hands.

(A count was taken by the Clerk.)

In favour, six. Contrary, 13. The motion is lost. Therefore subsections (2) and (3) carry.



Subsection (4), which is the export section. We have had the explanations on that. Are you prepared to see subsection (4) carry?

—Subsection (4) carried.

The CHAIRMAN: Subsection (5)?

—Subsection (5) carried.

The CHAIRMAN: We will now move on to section 14. Are you ready for the question?

Senator MACDONALD: Before the question is put on clause 14, Mr. Chairman, I would like to say that I do not want to be interpreted as voting in favour of the terms of this section. If I vote for it I vote for it for the simple reason that it has been fully considered in the other house and not only has it been fully considered in the other house but there has been a direct vote on it in the other house, not only in the Standing Committee on Banking and Commerce but it was also voted on in Committee of the Whole, and then when the bill was in the house for third reading there was a motion to refer it back for further consideration, which was a direct vote of the house which can only be interpreted as a direct vote of the house on this section. Now, the house has by a large majority voted for it. The minister was here today and he has been very fair with us, he has been very courteous. He has answered our questions but he has not convinced me that this section is in the interests of the consumers nor of the small businessmen. On the contrary I am still of the opinion that the section is not in the interest of either the consumer or the small businessman.

Now, honourable senators, section 14 is in my opinion the substance of this bill and if we vote against the section we vote against the whole bill.

Senator McLEAN: No, no. Absolutely not.

The CHAIRMAN: Order please.

Senator MACDONALD: A lot of senators evidently do not agree with me. I will limit it just to say that in my opinion the most important section of the bill is section 14, and the house has definitely gone on record as being in favour of it.

Senator McLEAN: On division.

Senator MACDONALD: On division, yes, and I would be in favour of voting it here on division. As I say, from the minister's attitude here at this time I am convinced that there is no hope of persuading the Government of the day to strike out this section. It would be a hopeless effort on our part to try to do so. In my opinion if we did so we would have to be prepared to go right through and insist on putting it through. If we do that we would hold up the whole bill.

Now, the Government must take the responsibility for this. To go only part way would be an empty gesture. We have told the Government what we think of it. We can tell them now what we think of it. We are against this but this represents the policy of the Government. I was inclined to support Senator Power's motion but for the same reason I did not vote for it, I felt that the section to which Senator Power referred was more in the interest of big business than it was in the interest of the consumer and the general public. But nevertheless the Government is determined with respect to this, it is determined in its attitude with respect to combines. In my mind they have always been and they are not changing their policy whatsoever. The Government opposes section 34 on retail price maintenance when it was introduced into the house in 1951 and they practically told the people they were going to change it when they came into power. Now they have done it, let them be responsible for it. As far as I am concerned I am against it.

Senator HUGESSEN: Mr. Chairman, I must accept my responsibility as a member of Parliament of Canada. I think this is a wicked section and I think no matter what the consequences may be we should express our opinion against it.

I move that section 14 of this bill be struck out.

The CHAIRMAN: Are you ready for the question?

Hon. SENATORS: Question.

The CHAIRMAN: Those in favour of striking out section 14 please raise their hands.

The CLERK: Eight, Mr. Chairman.

The CHAIRMAN: Those opposed to striking out section 14 please raise their hands.

The CLERK: Fifteen, Mr. Chairman.

The CHAIRMAN: The motion is lost.

Senator BURCHILL: Mr. Chairman, I just want to make one observation. Senator Hugessen said that he is voting on his responsibility as a member of Parliament. I hope he does not think the rest of us are not doing the same thing.

The CHAIRMAN: The next section we will consider is section 19, dealing with the Exchequer Court. Shall section 19 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Now we come back to section 12, in which we stood over subparagraph (2), on page 5.

Shall paragraph (2) on page 5 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Now we will go back to section 9 of the bill.

Shall section 9 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee adjourned.







Government  
Publication\*

BINDING DEPT. JUN 8 1962

Government  
Publications

~~HC  
I11  
A457  
1960~~

Canada. Parliament.  
Senate. Standing Committee  
on Banking and Commerce  
Proceedings.

PLEASE DO NOT REMOVE  
CARDS OR SLIPS FROM THIS POCKET

---

UNIVERSITY OF TORONTO LIBRARY

---

DECATALOGUED



3 1761 11549620 0

